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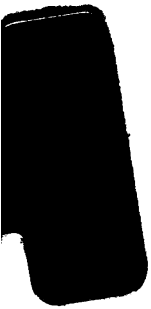
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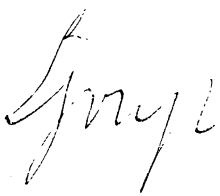
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2

THE

INFLUENCE OF CHRISTIANITY

UPON

INTERNATIONAL LAW.

The Hulsean Prize Essay

IN THE UNIVERSITY OF CAMBRIDGE,

FOR THE YEAR 1854.



BY

C. M. KENNEDY, B.A.

OF GONVILLE AND CAIUS COLLEGE,

WHEWELL UNIVERSITY PRIZEMAN, 1855.

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TO

THE REVEREND THE MASTER OF TRINITY COLLEGE,

THE VICE-CHANCELLOR;

THE MASTER OF GONVILLE AND CAIUS COLLEGE,

THE MASTER OF TRINITY HALL,

AND

THE REVEREND THE MASTER OF ST JOHN'S COLLEGE,

This Essay

IS MOST RESPECTFULLY DEDICATED

BY

THE AUTHOR.

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TO

EDWIN GUEST, ESQ. LL.D. F.R.S. THE MASTER,

AND TO THE FELLOWS

OF GONVILLE AND CAIUS COLLEGE,

This Essay

IS RESPECTFULLY DEDICATED

WITH SENTIMENTS OF GRATITUDE AND ESTEEM

BY

THE AUTHOR.

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CLAUSES *directed by the* FOUNDER *to be always prefixed to the* HULSEAN DISSERTATION.

CLAUSES from the WILL of the Rev. JOHN HULSE, late of Elworth, in the County of Chester, clerk, deceased: dated the twenty-first day of July, in the year of our Lord one thousand seven hundred and seventy-seven; expressed in the words of the Testator, as he, in order to prevent mistakes, thought proper to draw and write the same himself, and directed that such clauses should every year be printed, to the intent that the several persons, whom it might concern and be of service to, might know that there were such special donations or endowments left for the encouragement of Piety and Learning, in an age so unfortunately addicted to Infidelity and Luxury, and that others might be invited to the like charitable, and, as he humbly hoped, seasonable and useful Benefactions.

He directs that certain rents and profits (now amounting to about a hundred pounds yearly) be paid to such learned and ingenious person, in the University of Cambridge, under the degree of Master of Arts, as shall compose, for that year, the best Dissertation, in the English language, on the Evidences in general, or on the Prophecies or Miracles in particular, or any other particular Argument, whether the same be direct or collateral proofs of the

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observed in his times, owing to the great advances in civilization which the European nations have made during the last two centuries. When compelled to discuss some disputed point, the author has aimed, like Grotius, at taking the higher side, and in doubtful cases to adopt that decision which seemed most in accordance with Christian principles.

Since the subject of this Essay was given out, the peace of Christendom has been disturbed, and war has again spread desolation over Christian lands. To this altered state of circumstances no reference has been made in these pages. The writer would wish to discuss the question before him abstractedly; and those observations which may seem to bear on recent events, will, it is believed on further consideration, be found to rise naturally from the requirements of the subject. Perhaps, however, he may be allowed in *this* place to make one or two remarks bearing on questions of present interest, and which possibly may at no distant time force themselves upon the attention of the public.

That improvement in the rules of war which Mackintosh remarked[1], as having taken place during the

[1] "In the present century (eighteenth) a slow and silent, but very substantial mitigation has taken place in the practice of war: and in proportion as that mitigated practice has received the sanction of time, it is raised from the rank of mere usage, and becomes part of the law of nations." *Law of Nature and Nations.*

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last century, and in the recognition as forming part of the Law of Nations of what had hitherto been considered mere usages of doubtful authority, has certainly been extended in the period which has elapsed since he wrote. It is much to be desired that the general feeling which now seems to prevail among all civilized nations against the practice of privateering, may ultimately lead to its condemnation being recognised as one of the principles of International Law. The peculiar character of the present war, which renders privateering on the one side unnecessary and on the other almost impossible, happily accustoms the world to the idea of dispensing with it altogether. Were this relic of the disorders of the barbarous epoch[1] denounced by civilized nations, its suppression would hardly be considered henceforward as any *violent* departure from the laws of warfare, however justifiable it may have been regarded hitherto.

But above all things every Government should resolutely determine not only to discountenance but also to

[1] It would seem more correct to represent privateering as a form of the old system of letters of marque and reprisals, (originally granted in cases of pillage of a state's subjects in time of peace, and denial of justice and redress for the same, Guidon, *de la Mer*, ch. x. § 1), and not as a mere result of the mercantile system, though extended by that system of policy.

This is further shown by the official documents authorising the equipment of privateers.

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suppress those piratical expeditions of political adventurers which in the New World especially are so disgraceful to the present age.

The convention also, which it is said has been entered into between the Hudson's Bay Company and that of Russian America, to exempt from the operations of war their respective territories, seems to be no less an improvement on the practice of former times. There are other circumstances connected with the conduct of the present war which are deserving of praise, as tending to lessen in some degree those evils which a course of warfare must necessarily bring with it, more especially when it is carried on between the greater states. But the same praise cannot be extended to certain destructive missiles which have been lately brought under public notice. Their effect in increasing the miseries of war has hitherto been far better established, than any power they may possess of hastening its termination.

CAIUS COLLEGE,
November, 1855.

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THE INFLUENCE OF CHRISTIANITY UPON INTERNATIONAL LAW.

INTRODUCTION.

CHAPTER I.

Preliminary Observations.

The importance which mankind, by the constitution of their nature, attach to the Religion they profess, necessarily causes it to produce a considerable and very important influence on their general conduct; and while all Religions tend to promote a kindly feeling among co-religionists, they all differ as regards the conduct they prescribe towards the rest of mankind.

No belief contains such enlarged views in regard to the different nations of the earth as the Christian Faith; in fact, the catholic spirit and enlarged benevolence which pervade the Christian Religion, and which particularly distinguish it from the erroneous Beliefs prevailing in many parts of the globe, afford one of the most

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convincing proofs that it proceeds from Him who created and preserves this world and all its inhabitants. The universal nature of Christ's kingdom is expressly stated in many passages[1]; as also that all nations are of one blood and kindred[2]. Christians are enjoined to render good to all[3]; to love their enemies[4]; to do unto others as they would have others do unto them[5]; and to love their neighbours as themselves[6]; the word "neighbour" being shown to be employed in its widest signification[7].

In all these respects the tendency of the Christian Faith is to unite all nations in friendship with one another. And its tenets thus differ widely, alike from those of the Eddas which taught that to the stern deities of Scandinavia a life of warfare and rapine ended by a warrior's death was the most acceptable[8]; from the precepts of the Koran enjoining the followers of Islam to contract no real friendship with those not of their own faith[9]; as well as from the intensely individualising

[1] St Matth. viii. 11, xxviii, 19, 20; St Mark xvi. 15; St Luke xiii. 29, xxiv. 47; Acts ii. 14; Rev. xiv. 6.

[2] Acts xvii. 26; Gen. ix. 19, x. 32.

[3] St Matth. xii. 12; St Luke vi. 9; Gal. vi. 10; 1 Thess. v. 15.

[4] St Matth. v. 43—48; St Luke vi. 27.

[5] St Matth. vii. 12; St Luke vi. 31.

[6] St Matth. xxii. 39: St Mark xii. 31; St Luke x. 27.

[7] St Luke x. 29—37.

[8] Mallet's *Northern Antiquities.*

[9] See Part I. Chap. VII. Sect. 1.

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tendency of Buddhism[1]; and the beautiful theory of the ethical philosophy of Confucius, inapplicable in practice through the want of a sufficient authority to give it due weight, either in the person of its propounder or the subsequent great teachers of his school.

When states profess to be Christian they must necessarily also profess to guide their actions by Christian principles in International questions as well as in those of a civil and domestic nature; and though the influence of any particular religion is obviously more especially to be sought for amongst communities which profess that belief, yet under certain circumstances its influence may extend to those that do not. Consequently the great influence which Christian States exert on non-Christian nations by means of their superior organisation of government, and by means of their extraordinary progress in all the higher stages of civilisation, has caused the International Law of Christendom to be partially adopted by all the non-Christian nations with whom they have, for any continuous period of time, come in contact. In treating therefore of the influence of Christianity upon International Law the subject will naturally divide itself into two parts, in the first of which will be shown the influence of Christianity upon the International Law of Christendom; in the second, its influence upon that of non-Christian nations.

[1] An elaborate account of Buddhism is contained in No. 38 of the *Calcutta Review*. In No. 14 there is a similar account of the Writings and Philosophy of Confucius.

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Before however proceeding to treat of the Influence of Christianity upon International Law, it will be necessary to explain the manner in which that influence is considered to have operated, and to state the signification which will be here attached to the term International Law.

I. The Influence of Christianity upon International Law may be divided into direct and indirect: the former being that influence which Christianity has exerted, 1st, by means of considerations deduced from its express declarations and from the general tendency of its precepts; and 2ndly, by the agency of certain institutions, customs, usages, and other circumstances, owing their origin or existence to Christianity itself. The indirect influence of Christianity is derived through its previous influence on the other sources from whence International Law has been derived.

II. By the term International Law will be meant that body of Rights and Obligations, Duties and Moral Claims, existing between the different nations of the world, by which their intercourse with each other in peace and in war is regulated and settled; the development, in regard to them, of those universal and eternal principles of equity and justice which all men more or less clearly recognise as a law of their nature. It is of this law that Cicero speaks: "Est quidem vera lex recta ratio, naturæ congruens, diffusa in omnes, constans, sempiterna; quæ vocet ad officium, jubendo, vetando a fraude deterreat, quæ tamen neque probos frustra jubet

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aut vetat, nec improbos jubendo aut vetando movet. Huic leges nec abrogari fas est, neque derogari ex hac aliquid licet, neque tota abrogari potest; nec vero aut per senatum aut per populum solvi hac lege possumus: neque est quærendus explanator aut interpres ejus alius: nec erit alia lex Romæ, alia Athenis: alia nunc, alia posthac; sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit; unusque erit communis quasi magister et imperator omnium Deus; ille legis hujus inventor, disceptator, lator, cui qui non parebit, ipse se fugiet, ac naturam hominis aspernatus, hoc ipso luet maximas pœnas, etiam si cetera supplicia quæ putantur effugerit[1]." Its manner of application is determined by usage and custom, differing in different ages and countries; and it is thus that the remark of Suarez[2], that custom cannot affect Jus Naturale, but may affect Jus Gentium, is to be understood.

And though it be true, as some writers have stated, that there is no universal Law of Nations[3], "meaning by

[1] *De Republica*, Lib. III. 22. ed. Maii.

[2] *De Legibus*, L. ch. 4. § 4.

[3] Especially Ward. "It appeared to me, that we expected too much when we contended for the *universality* of the duties laid down by the codes of Law of Nations; that, however desirable such an universality might be, the whole world were not susceptible of that intimacy and closeness of union, which many philosophers of high name are willing to suppose; that it falls into different divisions or *sets* of nations, connected together under particular religions, moral systems, and local institutions, to the exclusion of other divisions or sets of nations; that these various divisions may indeed preserve an intimacy among one

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this that there are no universal *Laws* of Nations recognised by all nations in every part of the globe, and in every stage of civilisation," "there is a universal law, a principle of equity, of which all special laws are developments[1]." Every people have their International law[2], though that of some is extremely rude, and founded on principles extremely erroneous. The few tribes of degraded and isolated savages who have been found in different countries and in different ages living in woods and caves, in the so-called state of nature, are not to be styled communities, states, or nations, in the signification in which those terms are used in International Law.

International Law, thus considered, includes not only

another, and obey the same law; but that they may be contradistinguished from others who may have different religious and moral systems, operated upon by very different local circumstances: in fine, that what is commonly called the Law of Nations falls very far short of *universality;* and that therefore the Law is not the Law of *all* Nations, but only of particular classes of them; and thus there may be a *different* Law of Nations for *different* parts of the globe. Not only this, but even in the same part of the globe there may have been very different sorts of Law of Nations, according as revolutions have taken place in the religion, system of morality, and local institutions of the nations which compose it." Ward's *Law of Nations*, Vol. I. pp. xiii, xiv, and 137—139.

[1] Whewell's *Lectures on Systematic Morality*, Lect. VII. p. 175.

[2] "Toutes les nations ont un droit des gens; et les Iroquois mêmes qui mangent leur prisonniers, en ont un. Ils envoient et reçoivent des ambassades; ils connoissent des droits de la guerre et de la paix: le mal est que ce droit des gens n'est pas fondé sur des vrais principes." *Esprit des Lois*, lib. I. c. 3.

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the relations subsisting between governments and the transactions which they may have with individual members of other communities, but also questions and disputes between subjects of different states, arising out of the diversities of their respective municipal laws and institutions.

Though founded upon the moral nature of man, it owes its actual existence entirely to the existence of distinct nations, and in a great measure to the existence of independent nations.

In conformity with the practice of the soundest moralists it will here be regarded as a branch of the science of Morals, capable therefore of progressive improvement, and which in order to conform to the moral nature of man must become constantly more and more moral. International Law being here treated as a branch of Morality, it is necessary to observe that to teach morality was not the primary object of the Christian Revelation[1]: and further, that our Religion as it came out of the hands of its Founder and His apostles being completely abstracted "from all views either of ecclesiastical or civil policy[2]," can be expected to contain but few precepts immediately applicable as maxims of International Law. Nor must expectations be formed of finding the influence of the Christian Religion most active among those who are occupied with the management of temporal affairs[3]. These persons usually judge of

[1] Paley's *Evidences*, Part II. ch. 2. [2] Ibid.
[3] Ibid. Part III. ch. 7.

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measures by the short-sighted standard of temporary expediency or utility, which constitutes too often with governments the sole rule of action. The Influence of Christianity is to be sought for "in the silent course of private and domestic life[1]" rather than amid the hurry and distractions of public business.

[1] Paley's *Evidences*, Part III. ch. 7.

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CHAPTER II.

Christianity and War.

An important preliminary question yet remains to be discussed, one which according to the opinion formed respecting it, materially affects the view taken of International Law; and as this question is almost exclusively maintained on the ground of Christianity, it the more particularly requires an investigation here: it is, whether war is under any circumstances justifiable and lawful? In discussing this question we will consider, 1st, the doctrines of the Gospel which appear to bear upon the point; and 2ndly, the opinions and practice of the Church, and of eminent Christian teachers and writers.

1st. It is admitted on all sides that there is no direct and positive precept in the Gospel respecting war, and the circumstances of the cases both of the centurion of Capernaum and of Cornelius do not lead to any opinion being given as to the lawfulness or unlawfulness of their calling. It is impossible to admit Mr Dymond's[1] interpretation of the passage, "All they that take the sword shall perish by the sword," inasmuch as his view consigns to destruction every nation on the earth. And our Saviour's declaration to Pilate, "If

[1] Dymond *on War*, p. 35.

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my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews," seems implicitly to allow the lawfulness of war with regard to worldly matters; to repel violence, if necessary, by force.

In the writings of the apostles, allusion in a good sense is repeatedly made to military weapons and the military profession[1]; and this would certainly show that the writer did not regard war as altogether and inherently unlawful and wrong[2]. St John the Baptist considered the military profession a lawful occupation[3]; and the Old Testament contains rules of warfare, prescribing the manner in which the Jews were to carry on their wars with nations not dwelling in the promised land[4].

The apostle St James, however, in his general epistle states the real causes of wars, "From whence come wars and fightings among you? come they not hence, even of your lusts that war in your members? Ye lust, and have not: ye kill, and desire to have, and cannot obtain: ye fight and war, yet ye have not, because ye ask not[5]." In this passage are concisely given the real causes of

[1] "The trumpet, the weapons, the armour of war, are often employed as images to illustrate the Christian warfare. Here the analogy is, that the Christian is a spiritual warrior, in a good cause against an evil adversary. Thus the apostle Paul speaks of Epaphroditus and Archippus as his *fellow-soldiers*. If war were only and absolutely criminal the analogy would be unsuitable." Aikin *on War*, p. 33.

[2] Bernard's *Bible Battells*, ch. 3.

[3] St Luke iii. 14. [4] Deut. xx. [5] Chap. iv. 1, 2.

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war—the evil passions and evil deeds of mankind; *these* are again and again prohibited in the Gospel, and means for their remedy pointed out; and those virtues most expressly and earnestly commended which tend to a contrary line of conduct, such as forbearance, conciliation, and placability; while no regard is enjoined for what are commonly termed heroic virtues[1]. The Gospel thus contains no direct condemnation of defensive war[2]. Christianity does not forbid those attacked to defend themselves, either by the promise of an extraordinary intervention of Providence on their behalf, or by enjoining them to submit without resistance to the unprovoked aggressions of any nation which may choose to make war on them; and to human judgment this last course would only lead to calamities more dreadful than even those of war itself.

2ndly. As regards the opinions and practice of the Church, and of eminent Christian writers and teachers, it may be observed in the first place, that the idolatrous worship so much mixed up with Roman military discipline, and the dependence of a soldier's life, would have ill suited the character of the early Christians, when all

[1] Paley's *Evidences*, Part II. ch. 2.

[2] "Though the scriptures contain no fixed or definite rules to guide us in our determinations as to the expediency and justice of war, yet they evidently tend to create and foster those feelings of kindness and brotherly affection for all mankind, which check national contentions, and when they do take place, conduct them upon more humane and honourable principles." Blakey's *Temporal Benefits of Christianity*, p. 138.

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sought personally to convert others to the true faith as the most important object of their lives. It is therefore by no means surprising that in the first century and a half after our religion was promulgated, we do not find many instances of Christians serving in the legions. But in course of time, as the number of believers increased, many, especially when persecution was not directed against the Church, served in the army. Tertullian, who lived in the latter part of the second and beginning of the third century, relates the circumstance since known under the name of the Thundering Legion[1]. If this legend be true, about the year 174, in the army of Germany there was a considerable number of Christians; and as there is nothing to lead to the supposition that they then served for the first time, Christians must consequently for some time previously have either entered the legions, or remained in them after their conversion. If the narrative be false, it must have been an event which would not be considered improbable at the time the story was invented, which must have been before the time of Tertullian, as he would probably be accused by no one of having fabricated it himself.

The two following passages from his *Apology* are very important, both for showing the feeling of the early Christians in regard to war, and for distinctly stating that Christians were in the army as well as in other civil and state employments. "Si enim et hostes expertos non tantum vindices occultos, agere vellemus, deesset

[1] *Apology*, ch. 5. § 5. De la Cerda, 1624.

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nobis vis numerorum et copiarum? Plures nimirum Mauri et Marcomanni, ipsique Parthi, vel quantæcunque unius tamen loci, et suorum finium gentes, quam totius orbis? Hesterni sumus, et vestra omnia implevimus, urbes, insulas, castella, municipia, conciliabula, castra ipsa, tribus, decurias, palatium, senatum, forum. Sola vobis relinquimus templa. Cui bello non idonei, non prompti fuissemus, etiam impares copiis, qui tam libenter trucidamur? Si non apud istam disciplinam magis occidi liceret, quam occidere[1]." The meaning of this last paragraph, it is almost needless to remark, is, that Christians did not consider themselves justified in forcibly resisting persecutions directed against them on account of their religion.

And in a subsequent chapter[2], after complaining that Christians were unjustly accused of being mere unproductive members of Society, he says, "Navigamus et nos vobiscum et militamus, et rusticamur, et mercamur, proinde miscimus artes, opera nostra publicamus usui vestro. Quomodo infructuosi videamur negotiis vestris, cum quibus et de quibus vivimus, non scio." Nor does it appear that the views of Tertullian in regard to war, as expressed in his treatise, *De Coronâ*, (written about three years after his *Apology*), go the length that some have stated them to have done. His able translator, Mr Dodgson, says it is questionable "whether in those arguments which go against military service altogether,

[1] *Apology*, ch. 37. § 2.
[2] Ibid. ch. 42.

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he means more than to show its contradiction to the Christian character in the abstract; and the more, since at the close of the argument he permits Christians to remain in it, if already in it when called to be Christians, only suffering martyrdom rather than do anything unlawful; which he would not have tolerated, had he thought it wholly forbidden. It is the free choice of such a profession which he condemns, and serious persons could not have chosen it among such perils to the Faith[1]."

St Ambrose allowed the lawfulness of the warrior's calling, at the same time most strenuously pointing out that it afforded no justification of crimes or excesses committed by soldiers[2]. St Bernard even more strongly lays down this, especially on the grounds of the Christian doctrine of a future life, and severely condemns whatever may inculcate a spirit of revenge and afford encouragement to those evil passions which so strongly develop themselves in war[3].

In the Canon Law several elementary questions respecting war are discussed with regard to Christian doctrine applicable to them, and are decided by passages in the writings of the Fathers, and of Bishops, and by Acts of Councils. It is decided from St Augustine, *De Verbis Domini*, "militare non est delictum, sed propter prædam militare peccatum est," and from Isidore, *Etymol.*

[1] Dodgson's translation of Tertullian, note E on the treatise *De Coronâ*, where this point is treated at length.

[2] Seventh Sermon.

[3] *Ad Milites Templi Sermo*, ch. 1.

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"Justum est bellum, quod ex edicto geritur de rebus repetendis aut propulsandorum hostium causa[1]."

Of the Reformers both Luther[2] and Calvin[3] considered war to be lawful, and Zuinglius was killed in battle. Grotius replies to those who considered war to be unlawful[4], yet his numbering Erasmus amongst them would not appear to be altogether correct, as the following passages from that writer's works show: "De bello quid dicam? utinam omnes sic a bellis abhorreant quasi sic parricidium illic occidere, quando omnis Christianus Christiano germanus est. Sed in bello juste suscepto et legitime gesto, lex occidit, non homo. Ceterum Princeps qui non necessitate, neque rei publicæ studio, sed ob privatos affectus suscipit, tot homicidia committit quot homines in eo bello vel pereunt vel ad famem adiguntur. Adde quisque vel odio vel spe prædæ currit ad bellum, etiam si neminem occidet homicida est[5]." And again, "In bella sum iniquior et ubique quantum licet a bellis dehortor, ad pacem provoco. Nec tamen usquam sic detestor bellum, ut in totum ac simpliciter damnem[6]." We thus see that our own Reformers expressed the opinion and practice of the

[1] 23 Causa.

[2] Especially by his conduct in regard to the war of the peasants, and *Colloquia Mensualia*, ch. 61.

[3] Commentary on Isaiah ii. 4, where he states the prediction of universal peace, on which Mr Dymond and others have laid such stress, to be merely metaphorical.

[4] *De Jure*, Lib. I. c. 2.

[5] *Symboli Catechis.* 6.

[6] *Apologia ad Blasphemias Jac. Stunicæ.*

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Church when they stated, "It is lawful for Christian men at the commandment of the Magistrate to wear weapons and serve in the wars."

But though we thus consider the views of those who condemn indiscriminately all wars whatever to be erroneous, and the arguments they advance to be ill-founded, it must not be concluded that their efforts are wholly directed to an improper end. Whatever tends to lead mankind from acts of violence, and to induce them to submit their differences to the decision of those not directly interested in the matter, even should these not decide altogether equitably, raises them, whether the case is of nations or individuals, in the scale of civilisation: and as regards nations the result is every way more beneficial than that of a hasty and impassioned appeal to arms. The event of war, it must be remembered, does not decide the justice of the successful state's conduct, claims, or pretensions. "Unjust warres sometime may have good successe, for the iniquity of the people against whom they are undertaken: and therefore by the event, the justice of the warre is not to be ever judged, but by the just cause thereof[1]." The opinion of Vattel is similar: "La victoire contraint seulement le vaincu à donner les mains ou traité qui termine le différence. C'est une erreur non moins absurde que funeste, de dire que la guerre doit décider les controverses entre ceux qui, comme les nations, ne reconnaissent point de juge. La victoire suit

[1] Bernard's *Bible Battells*, ch. 5.

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d'ordinaire la force et la prudence, plutôt que de bon droit[1]."

The dissemination of such opinions in regard to war, tends powerfully to cause those who have the direction of public affairs to conduct diplomatic intercourse with great temper, forbearance, and moderation. It induces them carefully to avoid whatever may give rise to causes of irritation and quarrel, and when such do arise, earnestly to endeavour to preserve peace by generous concessions rather than "pertinaciously to urge doubtful claims that might provoke war—a calamity of which it is impossible to count the cost, to calculate the injury, or to foresee the end[2]!"

The various plans which have been proposed to terminate national differences by means of Congresses appear insufficient for that purpose. The calamities which they seek to obviate may be and often have been surpassed by those of passive non-resistance; very little opposition was offered to the progress of the barbarians in the last years of the Western Empire, and for some time after its fall, with what result is known to every one.

It has been computed[3] that, in those countries with whose history we are acquainted, from the earliest period to the middle of the last century about thirty-six thousand millions of human beings had perished through war; and the awful amount of suffering and misery thus brought

[1] Vattel, *Law of Nations*, Liv. III. ch. 3. § 38.
[2] Aikin *on War*, p. 6.
[3] In Burke's *Vindication of Natural Society*.

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upon mankind, of which this forms but a part, would induce any one who professes to be a Christian or to regard his fellow-creatures with feelings of humanity and philanthropy, to rejoice at the cessation of so great an evil. And, in the opinion of one of the most eminent members of the sister University, continuous war is the probable cause of the degeneracy into which the miserable savages that inhabit some portions of the earth have fallen[1].

To give an intelligible account of the different plans which have been proposed for the purpose of securing the peace of Christendom, would far exceed the limits of this chapter. It may be of interest to give M. Schmidt's account of the scheme of Gerohus, a writer who lived in the early part of the twelfth century, and who was probably the first to advance such a plan[2]; as to those of

[1] "As to the causes which have occasioned any portions of mankind thus to degenerate, we are, of course, in most instances, left to mere conjecture: but there seems little reason to doubt that the principal cause has been war. A people perpetually harassed by predatory hostile incursions, and still more, one compelled to fly their country and take refuge in mountains or forests" (whence savage, silvagio, *note*), "or to wander to some distant, unoccupied region (and this we know to have been anciently a common occurrence), must of course be likely to sink in point of civilization." Illustrated by the case of the Abyssinians. Whateley's *Introductory Lectures on Political Economy*, Lect. 5.

[2] Speaking of the time of Innocent the 3rd, "Gerohus de Regensberg, dans son saint zèle, avait déjà formé un plan en conséquence duquel le pape devoit défendre la guerre à tous les autres princes. Si quelqu'un d'eux avoit quelque chose a demander d'un autre, ils devoient se soumettre à la décision du

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others it must suffice to refer the reader to the works where they may be found, or where they are treated of; premising that some, like that of Grotius[1], took their rise from the influence of Christian Principles, while others, like that of Elizabeth and Henri Quatre[2], were based on political considerations[3].

Whether hereafter any plan similar to some one of those pointed out by any of these writers will be carried into effect, remains a question for the future to decide. But we may venture an expression of opinion, that if this great end should be achieved it will be rather by means of the great extension of the commercial relations which now prevail between the different nations of the earth, and by which, as it were, they have given securities for their mutual good behaviour[4]: by the better acquaintance they

pape. La sentence une fois portée, la partie qui ne s'en accommoderoit point, seroit excommuniée et déposée; mais au contraire la partie soumise seroit excitée à la guerre par les prêtres (tubis sacerdotalibus) tous les princes seroient appellés à la défense et quiconque refuseroit de détruire les impies Amalécites et de fondre sur le roi Agag, seroit privé à juste title d'une puissance dont il abuseroit ainsi." *Histoire des Allemands*, Tom. IV. p. 232.

[1] *De Jure*, Lib. II. ch. 23.

[2] Sully's *Memoirs*, Book III.

[3] More especially Manning's *Law of Nations*, p. 82; Wheaton's *History of the Law of Nations*, pp. 261—268, for St Pierre's *Scheme*, pp. 328—344, for Bentham's: and *Prize Essays on a Congress of all Nations*, Boston, U. S. 1840.

[4] "It is commerce which is rapidly rendering war obsolete, by strengthening and multiplying the personal interests which are in natural opposition to it. And since war is now almost

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form with each other, in consequence of the facilities for intercommunication lately invented; by means of correct principles of Political Economy being now better understood and practised, especially as regards colonies and colonial trade; and above all, by the general diffusion throughout the world of Christian principles and Christian knowledge.

the only event, not highly improbable, which could throw back for any length of time the progress of human improvement, it may be said without exaggeration, that the great extent and rapid increase of international trade, in being the principal guarantee of the peace of the world, is the great permanent security for the uninterrupted progress of the ideas, the institutions, and the character of the human race." J. S. Mill's *Political Economy*, Book III. ch. 17, § 5.

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PART I.

THE INFLUENCE OF CHRISTIANITY UPON THE INTERNATIONAL LAW OF CHRISTENDOM.

CHAPTER I.

Divisions of the Subject.

The International Law of the States of Christendom owes its present form to the combined operation of many circumstances, which have in different ways produced their respective effects during the centuries which have elapsed since the fall of the Western Empire. To show the influence of any of these, or to explain the manner in which each of the sources, from whence the International Law of Christendom is derived, has contributed to its present form, it is necessary in some degree to trace the history of the Nations in regard to whom its influence is sought to be shown. In pursuing this course with regard to the influence of Christianity upon this part of the subject of this Essay, the principal portion of the remarks necessary to be made, relative to the history of Christendom, will be placed at the commencement of the next two chapters; and, for the sake of convenience, the International Law of Western Christendom, which has been more or less adopted by the other States of the World, will be treated of in the earlier chapters of this Part; the others being relative to the Influence of Christianity upon the International Law of Eastern Christendom, and respecting certain Questions more immediately affecting Christian Nations.

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CHAPTER II.

The nature of the Influence of Christianity upon the International Law of Western Christendom.

When the Christian Religion was first promulgated upwards of eighteen centuries ago, the Roman Empire had absorbed every state, Persia excepted, of any note in that division of ancient history with which we are more particularly acquainted; and its transactions with foreign countries, excepting such as took place with Persia or with Meröe, were confined to those carried on with the various barbarous tribes situated on the frontiers of the Empire. The period of antiquity so full of instructive examples in regard to questions of International Law had passed away, and an era had succeeded which affords but few instances applicable as precedents in cases of International disputes.

When the Christian Religion, which had made its way during three centuries in all the countries of the Roman Empire, was in the year 324 proclaimed by Constantine the Great the Established Religion[1], the first shocks of the barbarian invasion had already been

[1] Mosheim, *Ecclesiastical History*, 4th Cent. Part I. ch. 1, 7.

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severely felt from the time of Decius: and 152 years after the establishment of Christianity, and 71 after the final division of the Empire into those of the East and West, the latter ceased to exist. It is happily unnecessary here to trace at length the details of those terrible events which attended the downfall of the Western Empire, when no less than universal destruction to the race of mankind seemed to have been threatened; but it must be observed that the severity of those calamities, awful as it was, was considerably lessened in those districts where the several races of invading nations had previously been converted to the religion of the conquered. This is presented in a very striking light by contrasting the conduct of the Goths in Italy and the Burgundians in France with that pursued by the Avars, Huns, Saxons, Northmen, Mongols, and Saracens[1]. Deplorable indeed as was the condition of the conquered, even under the regularly established government of nations whose manners were in some degree softened by conversion to Christianity, and who were in some measure united to them by the ties of their common religion; we can easily imagine the temporal consequences, had not the Christian Revelation taken place, and comprehend the vast difference which would be exhibited by society in almost every part of the globe, had it taken place some centuries later.

[1] The persecutions, however, which arose on the Goths and Burgundians professing Arianism, greatly impaired the value of their former mildness of conduct.

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Nor did the invasions cease on the fall of the Western Empire, but continued to a greater or lesser extent till near the end of the thirteenth century[1]. Wave after wave of strange barbarians continued to issue forth from the apparently inexhaustible regions of the North, East, and South. The difficult and laborious task of converting them to Christianity had to be gone through over and over again, as well as that of retaining their fickle minds in the new faith they had formally adopted[2]. In these arduous undertakings none were more distinguished, or achieved greater success than Missionaries from the British Isles; and to the silent labours of these pious men, the middle and modern ages owe an incalculable debt of gratitude[3]. The results of their labours in time counteracted the effects of that unhappy state of things which these events produced and prolonged for several centuries. "Les populations étaient sans cesse déplacées, refoulées les unes sur les autres; rien de fixe ne pouvait s'établir; la vie errante recommençait sans

[1] "Il ne faut pas croire que l'invasion des Barbares se soit arrêtée au 5eme siècle; il ne faut pas croire parceque l'Empire Romain est tombé, et qu' on trouve des royaumes barbares fondé sur ses ruines, que le mouvement des peuples soit à son terme, le mouvement a duré long-temps après la chute de l'Empire." Guizot, *Civilisation en Europe*, 3eme Leçon: and in the 14th Lecture, after stating that the wars of the early centuries of our era were those of migrations of whole nations, he says, "C'est là le caractère général des guerres Européennes jusqu'après les croisades à la fin du 12eme siècle."

[2] Ozanam, *Civilisation Chrétienne des Francs*, ch. 2.

[3] Ibid. chs. 4 and 5.

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cesse partant. Il y avait sans doute quelque différence à cet égard entre les différens états: le chaos était plus grand en Allemagne que dans le reste de l'Europe; c'était le foyer du mouvement; la France était plus agitée que l'Italie. Mais nulle part la société ne pouvait s'asseoir ni se regler; la barbarie se prolongeait partout, et par la même cause qui l'avait fait commencer[1]." The agency of these Missionaries however by degrees changed this, and remedied the evils of the almost continuous wars in Western Europe, which in the earlier centuries of the Middle Ages destroyed in some countries, as in England, and in the present arch-duchy of Austria and kingdom of Bavaria, together with the descendants of the former inhabitants, almost every vestige of the former civilisation, that not even their memory might survive[2]; and in every country, by producing the miseries of long continued war on the largest scale and in their worst form, caused to be forgotten all knowledge of the blessings of peace, and consequently dissolved all civil and pacific virtues. Thus, necessarily, greatly deteriorating the moral character of every class of the population.

The Dark Ages were entirely indebted to Christianity for the existence of a moral influence superior to that of mere force, an influence also quite independent of

[1] Guizot, *Civilisation en Europe*, 3eme Leçon.

[2] Ward, *Law of Nations*, Vol. I. ch. 8; Ozanam, *Civilisation Chrétienne des Francs*, p. 37.

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it, and capable of acting in opposition to it[1]. This is particularly exemplified by the remonstrances and expostulations which many bishops boldly addressed to barbarian leaders with regard to the devastation they caused. St Severin thus obtained security for many of the inhabitants of Noricum, and averted a march of the Rugians on Italy; and many similar instances occur in the history of those times[2]. In these ages also "it was the Christian Church which amidst the inundations of the Scythians on the one side from the north-west, and the Saracens from the east, did preserve in the sacred lap and bosom thereof the precious relics even of heathen learning, which otherwise had been extinguished as if no such thing had ever been[3]." Consequently, it was entirely owing to Christianity that

[1] "Et d'abord, ce fut un immense avantage que la présence d'une influence morale, d'une force morale, d'une force qui reposait uniquement sur les convictions, les croyances et les sentimens moraux, au milieu de ce déluge de force materielle qui vint fondre à cette époque sur la société." "L'Eglise Chrétienne exerçait seule un pouvoir moral." Guizot, *Civilisation en Europe*, 2eme Leçon.

[2] "L'empire était ouvert, mais les peuples n'y devaient entrer qu'un à un; et le sacerdoce chrétien se mit sur la brèche, afin de les retenir jusqu'au moment marqué, et pour ainsi dire jusqu'à l'appel du leur nom. Attila trouva St Léon au passage du Mincio, comme St Aignan sur les murs d'Orleans, et St Loup aux portes de Troyes. St Germain d'Auxerre arrêta Eocharich, roi des Alemans, au cœur de la Gaule, comme St Severin avait contenu leurs bandes sur les chemins de l'Italie." Ozanam, p. 43.

[3] Bacon, *Advancement of Learning*, Book I. *Praise of Knowledge.*

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Europe was enabled at length to emerge from that condition of apparently irretrievable barbarism, into which it was the tendency of these centuries of desolation and confusion to have thrown her.

Thus it was not till three centuries after the promulgation of Christianity that it was publicly established in the Roman Empire: during the century and a half which followed that event its influence was exerted in various ways to plant itself firmly in the more distant parts of that Empire, and among the nations beyond[1]; the four centuries of confusion which followed the downfall of the Western Empire, when it seemed doubtful whether Europe would not again return to that state of barbarism, in which the earliest accounts we possess represent that part of the world to have been, were adverse to the spreading of the Christian Faith into distant regions, or to the development of its precepts among the barbarous tribes which continued to infest Western Europe.

The check which Charlemagne imposed on the disorders of his time was in a great measure weakened by his death. "He stands alone like a beacon upon a waste, or a rock in the broad ocean. His sceptre was the bow of Ulysses which could not be drawn by any weaker hand. In the dark ages of European history, the reign of Charlemagne affords a solitary resting-place between two long periods of turbulence and ignominy, deriving the advantages of contrast both from that of the preceding

[1] Especially among the Goths. Mosheim, 5th Century, Part I. ch. 1.

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dynasty, and of a posterity for whom he had formed an empire which they were unworthy and unequal to maintain[1]" For though after his reign the extreme severity of these unhappy times was over, they left traces by their influence on the manners of different countries which it took centuries to efface. However, "it was to the mighty and comprehensive genius of Charlemagne that Europe owed her first improvements; and though his immense Empire split into fragments immediately upon his death, yet from his time the Western nations began to assume the outlines of that form and of those political institutions which they at present wear. The aspiring vigour of this wonderful man did more for the world than the exertions of whole ages before him. It extended everywhere the advantages of Christianity, it improved the means of communication, it gave cities and a police to the forests of Germany, and, what was of decisive importance, it unveiled the shores of the Baltic, whence a torrent of savages had perpetually poured down upon the nations who were then struggling into order. The geography and the resources of the North came thus in some measure to be known; men were freed from the constant fear of extirpation in which they lived; and, encouraged to become stationary, they were as wishful to preserve and regulate their conquests as they had before been furious to extend them. Two centuries more reared up the seeds which Charlemagne had sown[2]."

[1] Hallam's *Middle Ages*, Part I. ch. 1.
[2] Ward, Vol. I. p. 341.

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It was during and after the eleventh century that the West of Europe began to acquire a more settled form[1], and the important series of events which commenced in the last years of that century[2], causes all the subsequent international transactions of those states to owe their commencement to the direct influence of Christianity. For it was the Crusades, one of the immediate effects of the influence of Christianity, that first brought the different States of Western Christendom into direct communication with each other, "Le premier caractère des croisades, c'est leur universalité; l'Europe entière y a concouru; elles ont été le premier événement Européen. Avant les croisades, on n'avait jamais vu l'Europe s'émouvoir d'un même sentiment, agir dans une même cause; il n'y avait pas d'Europe[3]." The effect of the Crusades, internationally in regard to Christian States, was to reduce the number of wars by diminishing fiefs, and thereby necessarily lessening the number of those who could carry on war[4]. Their influence in regard to the relations between Christian and Mahometan States will be treated of in a future chapter.

Those European countries which, when the disorders of the Middle Ages began to subside, yet remained to be

[1] Ward, Vol. I. chs. 10 and 11.

[2] The first crusade took place in 1095.

[3] Guizot, 8th Lecture.

[4] "Elles (les croisades) ont beaucoup diminué le nombre des petits fiefs, des petits domaines, des petits propriétaires des fiefs; elles ont concentré la propriété et la pouvoir dans un moindre nombre de mains." Ibid.

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converted or reconverted, date the commencement of their civilisation from their conversion; and the Northern and Western portions of them naturally at once formed part of the Western States of Christendom, their conversion having been brought about by the labours of the clergy of the Latin Church. Mention will be made hereafter of those European countries which owe their conversion to the Eastern Empire, but they, after the fall of Constantinople, and especially after the changes which the Reformation brought about, also formed part of the great commonwealth of States composed of the nations of Western Europe.

In this manner did the Christian Religion become permanently established in Europe, and accordingly the nature of its influence upon International Law can now be considered. Its first effect was to moderate the calamities of war. This is especially seen in the command of Alaric on the taking of Rome, to spare the unresisting; and when it is remembered by whom and to what people that command was given, the progress of the Christian Goths, as well as their whole conduct on that occasion, is really extraordinary[1]. In the course of time, Christianity, having obtained a greater hold on the invading nations, restrained their ceaseless wars and feuds by the Treugæ Canonicæ, three truces established under the authority of the Church, the first lasting from every Thursday to Sunday, both inclusive, the second from Advent to the eighth day

[1] St Augustine, *De Civitate Dei*, Lib. I. ch. 6; Gibbon, ch. 31.

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after the Epiphany, and the third from Septuagesima to the eighth day after Easter[1]. In these periods all warlike actions were forbidden under penalty of excommunication, and though these truces may not have been very strictly observed, they, as well as certain other limitations of war prescribed by the canons[2], of which the following are illustrations, show the nature of the influence exerted by Christianity.

The Treuga Domini is thus defined in the first chapter of the Acts of the celebrated Council of Claremont, A. D. 1095, "Statutum est, ut in omni die et monachi et clerici, et feminæ et quæ cum eis fuerint, in pace permaneant. Tribus autem diebus, scilicet secunda, tertia, et quarta ab aliquo alieni illata non reputabitur pacis fractio; quatuor

[1] "Sed neque omni tempore licet bella gerere et hostilia tractare, canon enim prima de treuga et pace quosdam dies interdicit jovis scilicet veneris, sabbati ac dominicæ. Prohibentur et bella cunctis diebus quæ sunt inter adventum Domini et octavam Epiphaniæ et a septuagesima usque ad octavam Paschæ: appellaturque hæc treuga canonica sive legalis ad differentiam ejus quæ est in consensu ducum." P. Bellini, *De Re Militari*, Pars II. tit. 10. *In Tractatu Tractatuum*, Tom. XVI. It may be as well to remark, on account of the great circulation of Robertson's works, that although Thursday is here stated to have been included in the weekly Treuga Domini, whereas it is omitted by him (*Charles V.*, note 21 to sec. 1, Introductory); the statement given in the text is the correct one. Should the reader be desirous of observing some of that historian's strange inaccuracies, they will be found pointed out in Maitland's *Dark Ages*, Nos. 2 and 3.

[2] Grotius, *De Jure*, Lib. III. ch. 12. 4.

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autem reliquis diebus si quis alieni injuriam intulerit, fractionis sanctæ pacis reus habeatur, et prout judicatum fuerit puniatur." In the twenty-first chapter of the council of the Lateran of 1179, in the pontificate of Alexander the Third, it is thus expressed, "Treugas a quarta feria post occasum solis usque ad secundam feriam in ortum solis et ab Adventu Domini usque ad octavas Epiphaniæ, et a Septuagesima usque ad octavas Paschæ ab omnibus inviolabiliter observari præcipimus:" the bishop of the diocese was to excommunicate whoever should disregard this canon, unless satisfaction was afforded at latest on the third demand. The twenty-second chapter of the same Council commences thus "Innovamus ut Presbyteri, Monachi, Conversi, Peregrini, Mercatores, Rustici, euntes vel redeuntes, vel in Agricultura existentes, et animalia quibus arant, et semina portant ad agrum, congrua securitate lætentur." The title of the tenth chapter of the Concilium Avenionense in 1209, is "Ut ad pacem servandum etiam inviti cogantur;" and stringent regulations in regard to peace and peace-breakers were in 1214 provided by the Concilium Montempessulanum, chapters 32—39. The Concilium Tolosanum in 1229 decreed peace in the south of France for at least fourteen years, and the Concilium Melodunensis in 1232 strongly remonstrated with the Count of Toulouse for his bad observance of the peace he had made four years previously. And it may be observed in conclusion of these remarks, that the object of the Conventus Episcoporum in 1199, and of the Con-

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cilium Meldense in 1204, was to conclude peace between England and France[1].

Nor were these efforts of the Church to promote peace productive of but few and temporary results. Alphonso of Carthagena points out the pacific character of the reigns of the Gothic kings of Spain, many of whom, though they reigned long, carried on no wars[2]. And one of the charges brought against Louis le Débonnaire was, that he had unnecessarily called out a general expedition during Lent, a season during which it was even then considered right to cease waging war[3].

Many princes were distinguished for a peace-loving and peace-making character, even in those turbulent times; such were the Emperor Henry the seventh, Rupert king of the Romans, and St Louis; and the popes, St Gregory the Great, Alexander the third, Clement the sixth, and Benedict the ninth. All these, whenever they had an opportunity, laboured assiduously to preserve and promote peace. This was also a duty especially prescribed to legates, in discharging which they received much assistance from the bishops and abbots of the countries to which they were accredited.

[1] The above extracts and notices of councils are taken from the collection entitled *Sacrosancta Concilia*.

[2] In *Mores Catholici*, Vol. IX. p. 237.

[3] The third charge begins thus: "III. Quia contra Christianam obligationem et contra votum suum sine ulla utilitate publica aut certa necessitate pravorum consilio delusus in diebus Quadragesimæ expeditionem generalem fieri jussit." *Historiæ Francorum Scriptores*, Tom. II. p. 333.

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It was the reaction against the unhappy state of things which the wars of the Middle Ages prolonged in Western Europe, that caused, particularly in Italy, the preaching of many friars, who earnestly sought to establish a general peace, to be attended with such success. No one was more successful than Friar John of Vicenza, who, in the first half of the thirteenth century, traversed great part of Italy reconciling towns as well as individuals[1]. Two centuries later St Bernardine's preaching was attended with similar results[2].

Of a similar nature was that strange movement which, in the last years of the fourteenth century and commencement of the fifteenth, extended itself over great part of Europe, when multitudes clothed in white passed from place to place preaching and establishing peace between rival cities and chiefs. The rise of this general popular manifestation is thus described by an ancient annalist of the House of Este: "Eodem anno 1399. Fuit in Italia aliis quasi omnibus nationibus Christianis quidam mirabilis motus ceremoniarum et Religionis, quæ dicebatur *I Bianchi*. Quæ primum habuit initium in regno Granatæ Hispaniensis, sicut ab ipsius religionis auctoribus et primitivis referebatur. Fuerunt enim in regno illo Granatæ nonnulli viri, nonnullæque mulieres, qui ceremonias ejusmodi incœperunt, circumponentes singuli linteamen. lineum album in modum clamidis crispatum ad collum, et

[1] *Mores Catholici*, Vol. IX. ch. 12. Sismondi's *Italian Republics*, Tom. II. p. 372.

[2] *Mores Catholici*, Vol. IX. pp. 447, 8.

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ibant per civitates et oppida in formam processionis canentes cantilenas vulgares deprecatorias ad Deum pro salute humani generis, et per crebra gressus sui intervalla genu flexo alte vociferantes Misericordia Deo, Misericordia. Hi ad tales ceremonias allicuerunt totas Hispanias in civitatibus et oppidis quibuslibet cum omnium concursu admirabili sic se induentium linteaminibus albis, in processiones prodeuntium. Quidam ex ipsis deinde in Gallias, in Angliam, in Germaniam, et alias longinquas Christianorum regiones pergentes ultra quam credi potuit universos populos ad easdem ceremonias inducebant. Aliqui in Liguriam et Lombardiam declinarunt similiter facientes, &c.[1]" He then relates their progress through Italy, and the results of this extraordinary movement.

These events and circumstances, which were all immediately derived from the influence of Christianity, were productive of much good, and in a great measure alleviated the evils which arose from the peculiar political system of those ages.

Another instance of this influence is furnished by the declaration of the Polish delegates at the congress of Breslau, which met in consequence of the steps taken by the Council of Bale to decide the rival claims of Casimir of Poland and Albert of Austria to the throne of Bohemia. This suggestion was, that a diet of that country should freely decide the question, and was grounded on the sympathy they entertained for "a nation

[1] Jacobus de Delayto, *in Muratorii Rerum Italicarum Scriptores*, Tom. XVIII. pp. 956, 7.

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of the same language with the Poles, and for the good of Christianity[1]." Similar to these was the advice of St Louis to his successor, on his death-bed. To take heed not to go to war without deep reflection, and unless of necessity; and then to take care that neither the clergy nor those who had not injured him should suffer[2]; and Du Guesclin, when dying, enjoined his followers "Souvenez vous que partout où vous ferez la guerre, les ecclésiastiques, le pauvre peuple, les femmes et les

[1] Krasinski's *Religious History of the Slavonic Nations*, p. 99.

[2] "Chier fiuz, je t'enseigne que tu te gardes à ton pooir, que tu n'aies guerre à nul Crestien; et s'il te fesoit aucunes injures, essai pluseurs voies à savoir se tu peusses recouvrer ton droit, ainçois que tu feissez guerre: et aies entente tel que ce soit, pour eschiver les pêchiez qui sont fèz en guerre. Et se il avenoit que il te convenist fère guerre, ou pource que aucun de tes hommes défoillist de prendre droit en ta court, ou il feist injure à aucune église ou à aucune autre persone, quele que ele fust, et ne le vosist amender pour toi ou pour aucune autre cause rèsonnable; quele que la cause soit pour laquele il te conveigne fère guerre, commande diligaument que les poures genz qui n'ont corpés en forfèt, soient gardez que damage ne leur viegne, ne par ardoir leur biens, ne par autre manière; car il apartient miex à toi que tu contreignes le maufèteur en prenant les choses, ou ses villes, ou ses chastiaus par fore de siége, que ce que tu dégastasses les biens des poures genz; et pourvoi que ainçois que tu mueues guerre, que tu aies eu bon conseil que la cause soit mout rèsonnable, et que tu aies bien amonesté le maufèteur, et que tu aies atendu tant comme tu devras. Chier fiuz, encore t'enseigne que tu entendes diligaument à apèsier à ton pooir les guerres et les contens qui seront en ta terre ou entre tes hommes, que c'est une chose qui mout plèst à nostre Seigneur." Tenor of St Louis's Letter to his son and successor. Duchesne, Tom. v. p. 448.

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enfants, ne sont point vous ennemis, que vous ne portez les armes que pour les défendre et les protéger[1]."

The Manual entitled L'Arbre des Batailles, written by the Prior Honoré Bonnor in the reign of Charles the fifth of France, one of the earliest professed treatises on a portion of international law, contains many rules of limitations of war, which the general prevalence of feelings of this nature had caused to be observed. In the 84th chapter it is stated, that battles should be avoided if possible on holy days, though those who might be attacked on such days were perfectly justified in defending themselves. In the 86th chapter, the question, whether those who fall in battle are saved, is discussed at length; the first presumption is that they are not, for that being in anger and evil passions at the time of their death, they die in a state of mortal sin. Three conclusions however, are drawn: 1st, that those who die in a just war undertaken for the faith, and are not in a state of mortal sin; and 2ndly, those who die in a just war for a just cause; are saved. But that, 3rdly, those who fall in an unjust war for an unjust cause, are not. The 122nd and 123rd chapters exempt churchmen and pilgrims from war; and the benefits of this exemption are afterwards extended to infirm and diseased persons, and others: and the rules laid down in chapters 105—8, respecting affording students, natives of belligerent countries, facilities to frequent, during war, the universities of the

[1] Digby's *Tancredus*, p. 116.

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enemy's country, and permitting their near relatives to visit them, would probably exceed the moderation with which war is carried on even now.

Of the same nature are the views of Victoria in regard to war "Nunquam licet per se, et ex intentione interficere innocentem. Probatur primo Exod. xxiii. Insontem et justum non occides. Secundo fundamentum justi belli est injuria, ut supra ostensum (sec. 13. Unica est, et sola caussa justa inferendi bellum, injuria accepta): sed injuria non est ab innocente: ergo non licet bello uti contra illum. Tertio non licet in Republica pro delictis malorum punire innocentes: ergo nec pro injuria malorum licet punire innocentes apud hostes:" and after showing that this reasoning applied also to wars with the Turks, he says, "imo idem videtur judicium de innoxiis agricolis apud Christianos, imo de alia gente togata et pacifica, quia omnes præsumuntur innocentes nisi contrarium constaret. Hac etiam ratione sequitur quod nec licet interficere nec peregrinos, nec hospites, nec versantur apud hostes, quia præsumuntur innocentes nec re vera sunt hostes[1]."

Clemency towards captives was also advocated through the influence of Christian doctrines. Alcuin, the most distinguished writer of the time of Charlemagne, with whom he was on familiar terms, and who composed commentaries on many parts of Scripture, writes as follows to the Emperor, recommending him to show

[1] *Francisco à Victoria Relectiones Theologicæ*, Relec. VI. *De Jure Belli*, § 35.

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clemency to his prisoners: "Domine mi, memor sit pietas vestra captivorum, dum est Pappinus tuus tecum, propter gratiarum actiones mirabilis beneficii, quod vobiscum de Hunis divina fecit clementia: et propter prosperitatem imminentium rerum: ut clementissima illius potentia omnes adversarios sui sancti nominis vestris velociter subjiciat pedibus[1]."

The effusion of Christian blood was condemned in general terms by the different codes composed during and after the reign of Charlemagne[2]; and especially by a league, in 1054, between the nobles of the south of France, for the better observance of the Treuga Domini and for the cessation of hostilities on certain saints' days[3]. And the preceding remarks will have shown how effectual a restraint this general feeling placed both on the wars of Christian nations and on what has been incorrectly termed the right of private war, by which any individual who considered himself injured also considered himself at liberty to take up arms on his own behalf. The influence of the Papacy will be more fully referred to below; but it must be here observed that the popes and the clergy generally appeared everywhere in the character of mediators in international disputes: the so justly praised conduct of St Ambrose to the Emperor Theodosius on the occasion of the massacre at Thessalonica, though not strictly

[1] Alcuin's *Epistles*. Letter 90.

[2] Ward's *Law of Nations*, Vol. II. p. 15. *Mores Catholici*, Vol. IX p. 266.

[3] *Du Mont*, p. 7.

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applicable as a case in point here, may be cited to show the manner in which the clergy exercised their influence.

In accordance with the principle which actuated the conduct of St Ambrose are, the letter of Pope Alexander the third to Henry the second of England, recommending peace with France[1]; the efforts of the Cardinal of Perigord to prevent the battle of Poictiers, who obtained one day's truce, and endeavoured in vain to prevail on the French to offer reasonable terms[2]: and the intercession of the Cardinal of Albany, at the capture of Montpelier by the duke of Anjou, which obtained the reversal of the sentence pronounced against the inhabitants, by which six hundred had been condemned to death, and the rest to perpetual slavery[3]. All these interferences were expressly grounded on precepts prescribed by the Christian Religion.

Slavery, though more strictly a question of polity, is perhaps not wholly out of place to be treated of here; especially as the slavery of the Middle Ages was not the effect of sensuality as among Mahometans, or of commerce as in more modern times, but owed its origin to war. It was from the age of Gregory the Great that slavery

[1] Dated from Viterbo, Sept. 1162. Rymer's *Fœdera*, I. p. 21; the author regrets that its length prevents its being cited. It may be stated generally that this volume of Rymer contains many documents illustrative of the above remarks respecting the nature of the influence of the clergy.

[2] Froissart, Vol. I. ch. 159.

[3] Ward's *Law of Nations*, Vol. II. pp. 51—54.

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began gradually to disappear in Europe[1]. Its disappearance is another of the blessings Europe owes to Christianity[2]. In the words of Mr Ward, "the professed and assigned reasons for most of the charters of manumission, from the time of Gregory the Great till the thirteenth century, were the religious and pious considerations of the fraternity of men, the imitation of the example of Christ, the love of our Maker, and the hope of redemption. Enfranchisement was frequently given upon a death-bed as the most acceptable service that could be offered; and when the sacred character of the priesthood came to obtain more universal veneration, to assume its functions was the immediate passport to freedom[3]." It is the general tendency of the precepts of Christianity that is contrary to slavery, rather than any particular or positive expression. No distinction is allowed in them to exist between the bond and the free[4], all men are declared to be equal in the sight of God[5], and Christians are enjoined to look upon all mankind as members of one family, and

[1] Ward's *Law of Nations*, Vol. II. p. 26.

[2] Whewell's *Elements of Morality*, Art. 427; Manning's *Law of Nations*, p. 156; Guizot, *Civilisation en Europe*, 6^eme^ Leçon; Paley's *Evidences*, Part III. ch. 7; Hallam's *Middle Ages*, ch. 2, part II; *Temporal Benefits of Christianity*, pp. 170, 171; in Appendix, Note C, mention is made of many councils which condemned or decreed modifications of slavery.

[3] Ward's *Law of Nations*, Vol. I. p. 229.

[4] Coloss. iii. 11.

[5] Acts x. 34. Rom. ii. 11. Ephes. vi. 9.

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mutually to regard their fellow-Christians as brethren[1]. The Saxon laws prohibited, from Christian motives, the sale of Christians out of the country or to Pagans[2]: the third Lateran Council in 1179 declared that all Christians ought to be exempt from slavery[3]: and king Magnus Ericson of Sweden, in 1335, declared that in future, in his territories, no one born of Christian parents should be or be called a slave[4].

The nature of the influence of Christianity in moderating the calamities of war and their immediate effects having been now shown, its influence in preventing war may properly next be considered. This was principally derived from the Gospel precepts to regard all mankind as members of one family, from the stress laid on the love Christ's disciples were to bear to one another, it being expressly declared to be their distinguishing mark: "By this shall all men know that ye are my disciples, if ye have love one to another[5]." This command is also expressly extended to their enemies, and numerous passages teach Christians to do good at all times, without exception, to all men, though especially to those of the household of faith.

In every age, notwithstanding the corruptions and abuses which crept into the Western Church, the Word

[1] St Matt. xxiii. 8.
[2] Ward's *Law of Nations*, Vol. II. pp. 28—31.
[3] Ibid.
[4] Geijer's *History of the Swedes*, ch. 4.
[5] St John xiii. 35.

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of God remained the same, and the constant study of it by a large body of men especially devoted to teaching the Christian religion and performing its sacred offices, necessarily caused its doctrines to produce a very considerable effect; more particularly as the learning of the Middle Ages was almost exclusively theological[1]: and this was extended further by the institution of the different orders of Regular Clergy, who exerted in this respect a very beneficial influence[2]. The precepts of Christianity, and the considerations deduced from them, reduced the number of causes on account of which war would have been undertaken; for, by introducing among the rude nations of the North more correct ideas of what was just and right than those which they had previously held, and by causing them to understand that mere might can in no case constitute either absolute or relative right, the slight and frivolous grounds on account of which war would have been engaged in, in former times, began to be looked upon as unlawful; and the dread of punishment in a future life exercised a wholesome restraint on the minds of those who were regardless of what might befall them on earth. War was therefore not so eagerly or hastily entered upon as before; and time was thus afforded for passion to cool, and the result of the conflict to be calmly calculated. This also allowed time for mediation to be either suggested by one of the contending parties, or offered by a neutral

[1] Maitland's *Dark Ages*, p. 187.

[2] Ibid. pp. iv. and v. *Temporal Benefits of Christianity*, pp. 102, 103.

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power, at a period when its advantage would be more likely to be seen and the offer consequently accepted[1].

Christianity also indirectly tended to prevent wars by its general influence on the manners of the invading nations. An example of this may be seen in Adam of Bremen's account of the Danes after their conversion, where he states that laying aside their piratical manners they cultivated their own country, and lived at home a quiet and contented life[2]. This description *mutatis mutandis* may be applied to the other nations after their conversion: and in our own days its accuracy has been strikingly shown by the similar change produced in the manners and customs of the native populations of many of the South Sea islands, and more particularly in New Zealand[3].

[1] Perhaps the earliest amicable settlement of difficulties by mediation in a regular manner is that of which an accouut is contained in Rymer's *Fœdera*, I. p. 43, to terminate certain differences between Castile and Navarre by reference to Henry 2nd of England, the agreement to make, and abide by, this reference, is regularly drawn up in 28 articles; and Henry's decision, which is given at p. 48, is drawn up in a like regular manner, and signed by many of the most eminent persons of England.

[2] "Ecce populus ille piraticus a quo totas olim Galliarum et Germaniæ provincias legimus depopulatas suis nunc finibus contentus est...Ecce patria ille horribilis semper inaccessa propter cultum Idolorum et Scythicæ non mitior ara Dianæ, deposito jam naturali furore prædicatores ubique certatim admittit, destructisque Dæmonum aris Ecclesiæ passim eriguntur." *De Situ Dan.* ad fin.

[3] "The first effect of Christianity was to lead the people to give up that system of warfare which had made every

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The imperfect civilisation of the Roman world and the barbarous manners of the invading nations, after centuries of continuous wars and disorders, naturally caused strangers to be regarded as spies, and they were accordingly liable to be either put to death, or reduced to slavery. The influence of Christianity abrogated this barbarous custom, and enjoined hospitality to be shown them; this especially appears from various laws of the Bavarians, Hungarians and Saxons[1].

So great had been the depravity of manners in this respect, that the dreadful practice of robbing and pillaging shipwrecked persons was generally prevalent, and severe enactments had to be made against it. The third council of the Lateran, whose labours we have had often before to refer to, decreed as follows respecting this practice, and piracy: "Excommunicationis quoque pœnæ subdantur, qui Romanos, aut alios Christianos, pro negotione vel

tribe the enemy of its neighbours;" they lived in fortified villages, and had no feeling of security: now it is quite otherwise, agriculture has been extended, and the principles of commerce made known: "this alteration had its beginning therefore in Christianity, which has introduced a state of peace before unknown, and the opportunity of giving the attention to quiet pursuits." Archdeacon Williams, in the *Church Missionary Record* for 1852.

[1] Ward's *Law of Nations*, Vol. II. pp. 12—14. "By a law of the Hungarians, the lateness of whose conversion (begun in the 10th and not completed until the 13th century) gives us opportunity to mark more immediately the effect of the new religion, benevolence towards strangers is enjoined for the sake, and after the example, of Christ."

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aliis causis honestis navigio vectos, aut capere, aut rebus suis spoliare præsumunt. Illi etiam qui Christianos naufragia patientes, quibus secundum regulam fidei auxiliari tenentur damnanda cupiditate rebus suis spoliare præsumunt, nisi ablata reddiderint, excommunicatione se noverint subjacere[1]." The Rôles d'Oleron ordained severe punishments for so heinous an offence[2], and as they were either copied into, or formed the basis and model of the maritime laws of Flanders, the cities of the Baltic, and other Northern Maritime States[3], they were of considerable influence in gradually putting an end to this barbarous usage. By these means, and the extension of civilisation, Christianity laid the foundation of those facilities of international intercourse which now exist in civilised countries.

Mention has already been made of the influence of the clergy; it will now be more fully noticed. We need not trace minutely the manner in which the bishops of Rome obtained the direction of the Western Church, but their political influence requires to be fully treated of. The organisation of the clergy, a body of men taken from and associating with all ranks of the community[4], and by means of a common head connected with foreign countries, together with the advantages of a regular education almost exclusively belonging to them, caused them to possess

[1] Ch. 24.

[2] Pardessus, *Lois Maritimes*, Vol. I. p. 346; Ward, Vol. II. p. 352.

[3] Pardessus, Vol. I. ch. 8.

[4] Guizot, *Civilisation en Europe*, 6eme Leçon.

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more enlightened views than those held by other classes. It also tended to dispel amongst them those prejudices in regard to foreigners then especially so generally entertained, at least on occasions when their own interest was not, or was not thought to be, concerned. The practice of auricular confession, by bringing before them the actions and even thoughts of all classes of the people, greatly augmented their previous influence. This was further increased by the gradual development of the new doctrines of faith introduced by the Roman See in the course of the Middle Ages, and by the state of dependence on the pope into which the churches of Western Christendom more or less fell: so that at length the spiritual despotism of the popes became complete, the occasional revolt against their authority of some sections of the people, as the Waldenses and Hussites, mainly showing the firmness and extent of their sway.

In the mean time the papacy had become a temporal power, and this circumstance was productive of very important results in after ages. The progress of events had early caused the pope to become temporal ruler of Rome and its vicinity; and the reciprocal services rendered by the popes and the great sovereigns of the house of Charles Martel, caused each to continue on good terms with the other, and augmented the power of both. But when the empire had been transferred to Germany, the tendency of events was to re-establish, in Western Europe at least, a paramount sovereign, as was especially the case under Conrad the second, Otho the Great, and Henry the third;

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and the papacy had become under the latter merely the first bishopric in the emperor's gift[1]. This was a very different state of things from that which had existed two centuries and a half before, when pope Leo had proclaimed Charlemagne, Augustus and Emperor of the West. And Hildebrand, when, in 1073, he ascended the papal throne as Gregory the seventh, determined to adopt such measures as should effectually prevent the restoration of a temporal universal empire; and at the same time establish the spiritual supremacy of the Roman see, as well as preserve for it a supervision in the domestic affairs of other countries[2]. Had the empire been re-established, evil results would probably have arisen from the papacy being in the emperor's uncontrolled gift, and if a variety of independent Christian powers were to coexist instead, greater evils would have resulted from the popes being mere subjects of any one of those states. But the views of the papacy after the accession of Hildebrand were by no means confined to a middle course. The times especially favoured their enterprise of reducing secular powers to a state of dependence on them. The Canon Law provided rules for every emergency of daily life; and, in the twelfth century, every institution had become pervaded with the influence of the Church. The extreme violence with which it pleased the monarchs of the Middle Ages to carry out their wishes, and the ultra party spirit which prevailed in the free states, caused the suicidal policy of

[1] Ranke's *History of the Popes*, Vol. I. ch. 1. § 3.

[2] Hallam's *Middle Ages*, ch. 7, pt. 1.

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invoking papal intervention to be the only course by which even temporary redress could be obtained; and further, in the differences which arose between the popes and different sovereigns, the latter were almost invariably in the wrong.

Things were in this state when Innocent the third was elected pope, in 1198. He was the greatest statesman of his age, of boundless capacity, and indefatigable activity. His pontificate was the most successful period of that system "which held forth redress where the law could not protect, and punishment where it could not chastise;" when there was "no interest so insignificant or isolated that it did not affect, nor any member of the body politic it did not attempt to direct." Innocent laid an interdict on France, and thus compelled Philip Augustus to receive again his queen, whom he had unjustly divorced. He ordered Richard the first of England to abandon a war in which he was engaged against France. The king of Navarre was directed to restore to Richard some castles he had improperly retained. The kings of Castile and Portugal were informed that his legate would preserve peace between them, "if necessary by excommunication and interdict." The king of Leon is compelled to acknowledge the invalidity of his marriage with his cousin; and the king of Aragon is directed to restore the value of the coinage which he had debased; and he as well as John of England surrendered his kingdom as a fief to the Roman See. In Norway, Swero is excommunicated for usurping the crown. Advantageous terms in regard to investitures and episcopal elections were obtained

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from Otho the fourth, of Germany; and the king of Hungary, who had detained a legate, is told that Innocent "might be compelled to prevent his son's accession to the throne." During Innocent's pontificate also a temporary reunion was made with the Eastern Church, and the kings of Bulgaria and Armenia acknowledged his spiritual supremacy[1].

Such was the international conduct of this the greatest of the popes, carried out with the same high hand during his long reign of twenty-eight years; but his conduct was too arbitrary even for that age, and first decidedly attracted the attention of all Christian nations to the real tendency of papal pretensions. No one of his ability succeeded, and though the result of the quarrel between the Emperor Frederic the second and Innocent the fourth was favourable to the latter, a reaction was ensuing, which showed itself in the successful resistance made by Philip the Fair against Boniface the eighth. This was the more severe blow inasmuch as public opinion, which always prevails, then, probably for the first time, unequivocally declared against the papacy; and similar instances of successful resistance occurred in other countries. Time might have remedied this, and the real history of these transactions might have ceased to have been understood, but the great schism in 1378, which was not terminated till the election of Martin the fifth in 1417, and the opposition between the councils of Constance and

[1] Hallam's *Middle Ages*, ch. 7, pt. 1. *Temporal Benefits of Christianity*, ch. 4.

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Basle and the papacy, further weakened the latter. By this time also the Lollards and Hussites had caused views to be held and opinions discussed, which were subversive of the extreme authority of Rome. Ranke shows how many concessions had been made by that See in the fifteenth century, and how different its influence was then from what it had been two centuries previously[1]. A great change too had come over the older modes of thought and opinions of the middle ages. Secular views and objects were solely regarded[2], and the rude violence and enthusiastic devotion of former times alike subsided into a cold and calculating spirit of selfishness. The popes themselves acquiesced in and followed out this new policy. They mixed themselves up with the petty intrigues of Italian states and cities; and each considering himself solely as an Italian temporal prince, employed alike his spiritual and temporal influence to further his personal designs, or to gratify his private resentments[3]. The policy of the papacy as originated by Gregory, and so completely carried out by Innocent, was no longer the only and ruling object of each succeeding pontiff.

Sixtus the fourth and Alexander the sixth initiated the peculiar policy of endeavouring to found principalities for members of their own families. Julius the second gave this a different direction by his attempt, in some degree successful, to extend the papal states[4]: but as regards the

[1] Ranke's *History of the Popes*, Vol. I. ch. 1, § 4.
[2] Ibid. ch. 2, § 2.
[3] Ibid. ch. 2, § 1.
[4] Ibid. ch. 2, § 1.

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papacy the result either way was ruinous; the popes, more than any one else, overthrew the independence of Italy; and their influence fell with its independence, and on being mixed up with local interests and intrigues. It is very important to observe that by these means the temporal and spiritual interests of the papacy became opposed, especially as this passion for territorial aggrandisement prevailed; and when popes, as Leo the tenth, and Clement the seventh, were connected with Italian sovereign houses[1], the dissensions which this circumstance gave rise to greatly facilitated the Reformation, and the emancipation thereby afforded as well from the spiritual as from the temporal despotism of modern Rome.

The fact of one particular man[2], who could be a native of any country, being chosen to fill the Roman see, and by that means becoming during a considerable portion of the middle ages the *de facto* premier sovereign of Europe, is peculiar to Christendom. The Popes, before the Reformation, were not unfrequently natives of transalpine countries[3]; they had often when

[1] Ranke's *History of the Popes*, Vol. I. ch. 3.

[2] "It was reserved for the Christian nations alone uniformly to obey—though dissimilar in origin, character, and language, and often disunited by opposing interests—ONE PARTICULAR MAN, taken promiscuously from among them to expound their religious duties, and be their director in points of conscience." Ward, *Law of Nations*, Vol. II. p. 33, also pp. 37–50.

[3] In the enumeration of the popes contained in the celebrated Spanish work, *Clave Historial*, up to Leo the tenth, three-fourths had been natives of Italian states, and the rest of other parts of Christendom.

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cardinals visited foreign courts in the capacity of legates, and thus acquired personal acquaintance with the manners and institutions of foreign countries.

The high respect paid to the clergy in general, necessarily caused great reverence to be shown to their head. Disputed claims were laid before him, and his mediation and protection invoked; and it is probable that from this circumstance arose the system of mediation so much resorted to in later times, and by which war has been so often averted. The custom of appealing to neutral nations, in regard to the justice of any cause in which a nation may be engaged, probably also derived its origin from the appeals and justificatory notes addressed to the popes[1]. Though in the earlier general councils of the Church (another institution entirely owing its origin to Christianity) only questions of doctrine and discipline were discussed and settled; yet in the councils of the West, on the increase of the papal influence, temporal questions were also considered, and international disputes

[1] "It is not improbable that the custom of APPEAL to neutral powers on the breaking out of war, arose from this influence of the pope in the Christian republic. Habituated to lay their grievances before him on all occasions, and to justify their conduct when it appeared to be necessary, the transition was easy from him to other princes, and the connexion between the various potentates growing closer and closer, they continued from a sense of its utility a custom which possibly would not have been thought of (or at least not so soon), had it not been for the deference they paid to him at a time when knowledge of one another was not so universal." Ward, Vol. II. p. 50.

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arranged[1]. Perhaps the very origin of modern diplomatic congresses may be attributed to the practice of holding these councils, in which representatives of independent nations met, and in which questions affecting one or more countries were treated of in common.

The papacy was in reality the centre of the Christian commonwealth; at Rome alone could envoys of remote states meet, and there alone could distant nations keep up a slight acquaintance with each other[2].

The papacy, then, exerted its influence,

1st. By means of the habitual reverence paid to the pope.

2ndly. By means of councils.

3rdly. By appeals to Rome in cases of international disputes.

4thly. By means of legates or nuncios, generally resident at the more important courts (whence probably the origin of resident embassies); and,

5thly. By means of a regularly organised clergy and the influence they acquired, whether from their office, on account of the high posts they occupied, or from personal considerations.

[1] Especially in the two councils of Lyons. Ward, Vol. II. pp. 60–73, and Manning's *Law of Nations*, p. 10.

[2] "There was great advantage in having a common referee (the pope) in all national controversies, who could never think of extending his own territorities, though he might make a most improper use of his power." Barrington *on the Statutes*, p. 510.

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This influence was exerted to preserve peace and enforce justice[1], wherever the supremacy of Rome was not called in question or her doctrines and tenets made the subject of dispute: but as the barbarism of the middle ages passed away, the pretensions of Rome increased, and she thus furnished both occasion for dissensions and false causes for war. By branding with the name of heretics all who differed from her rule of faith, and by turning against them the arms of states yet remaining faithful to her, which till then had been directed against the common enemies of the Christian Church[2], she kindled persecutions as severe as those which were directed against the Church in the first centuries of our era, and more continuous by means of a more regular organization to carry them out; and encouraged religious wars, calamities even worse than the continued predatory inroads of barbarians. But, providentially, at the time of the Reformation, civilization had made considerable progress, and Rome could not undo what she had mainly contributed to bring about. Many of the most warlike, though not on that account least civilized portions of Europe, threw off her yoke, and the Peace of Westphalia restored harmony; the previous wars having shown the futility of the attempt to re-establish the spiritual dominion of Rome.

[1] Ward, Vol. II. pp. 46–49, and the preceding pages.

[2] The following is an instance, "Fontinus de la Valle, legate at Nuremberg, declared that 'it was the wish of the holy father that the army of the empire and a crusade should be employed rather against the heretics (the Hussites) than the Turks.'" Krasinski, *Religious History of the Slavonic Nations*, p. 101.

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In these struggles the opposition between the temporal and spiritual interests of the papacy, as well as the rivalry between the great catholic powers, again greatly assisted the Reformers, especially in Germany; and after the immediate ill-feeling caused by these differences had passed away, a more catholic spirit pervaded Christendom.

To recapitulate:

Christianity laid the foundation of the international law of Western Christendom by means of the influence it exerted on the nations which conquered the Western Empire, and the form that influence consequently gave to European civilization. The nature of its influence may be briefly stated to have been 1st, to preserve and promote peace; 2ndly, to soften the severities of war[1].

[1] "War, which if Christianity were heartily and generally embraced, would be wholly unknown, has been, even as it is, much mitigated by the humanising influence." Whately's 8th Lecture *on Political Economy*.

"The Christian spirit has effected a complete change in the mode in which modern nations conduct both their peaceful and aggressive proceedings with each other. No matter how reckless even belligerents may be, still they recognise the claims of general humanity. In the various modes of terminating national disputes peaceably, by compromise, mediation, arbitration, conferences, and congresses, we have striking manifestations of the wholesome rules of Christian morality and forbearance, and how the great interests of mankind are beneficially affected and promoted by them.....Though the extreme rights of war are rigorous and oppressive, Christianity nevertheless enforces the common duties of humanity.....No civilized country would, at the present day, enter into any matter touching its own or its

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Its efforts to preserve peace arose, 1st, from the regard it taught to be shown towards mankind in general as members of one family; 2ndly, by the institutions and usages it gave rise to, more especially of congresses, resident embassies, and the practice of mediation, and the influence it exerted on the writings of publicists[1]; and 3rdly, by the kindness it enjoined to be shown to strangers, and the facilities thereby afforded to international intercourse, by which the interests of the different countries of Christendom have become so assimilated that they appear to be, as it were, members of one great federation.

When war, from whatever causes, took place, Christianity, by the tendency of its precepts and by its humanising effect on modern civilization, softened its severities by forbidding all wanton and unnecessary devastation of hostile countries, and by abolishing that slavery which originated from war. It also facilitated the return of peace by that decided expression of the Gospel, "Blessed are the peacemakers; for they shall be called the children of God[2];" and this title, in the hasty retrospect contained in the present chapter, we have seen could justly be applied to many who have therein been mentioned.

neighbour's rights and privileges, without feeling it an imperative duty to make a formal declaration of its reverence for Christian justice, truth, honour, and humanity." Blakey's *Temporal Benefits of Christianity*, pp. 338—340.

[1] See ch. 4. [2] St Matth. v. 9.

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CHAPTER III.

The Rise and Extension of the International Law of Christendom.

THE notices contained in the preceding chapter, relative to the period immediately succeeding the establishment of the barbarian kingdoms, show a time when throughout the west of Europe ill-defined and ill-apprehended international usages and maxims formed the international law of that part of the world. In this chapter it is intended to convey a general idea as to the manner in which the present international law of Christendom arose, to which will be added some observations in regard to its extension during the period that elapsed from the reign of Charlemagne to the Peace of Westphalia.

In the earlier centuries of this period, throughout Europe nations had but limited intercourse even with their nearest neighbours, and the disorders of these times caused them not to feel the want or advantage of any further intercommunication. However, by degrees, and more immediately by means of the papacy and the empire, all Europe west of the Adriatic, and the countries beyond Hungary and Poland, became subdivided into sets of states; differing more or less from each other, but united by various ties, and especially by their

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all professing a common form of the Christian religion. The various events and circumstances mentioned in the preceding chapter had caused the different nations of Christendom to acquire a general knowledge of each other, and had prepared the way by which, as soon as more favourable times came, they coalesced together into that closely connected system of states which they now form.

Perhaps the earliest definition of international law to be found in a writer of the middle ages is that of Isidore: "Jus gentium est sedium occupatio, ædificatio, munitio, bella, captivitates, servitutes, postliminia, fœdera, paces, induciæ, legatorum non violandorum religio, connubia inter alienigenas prohibita: et inde jus gentium quod eo jure omnes fere gentes utuntur[1]." The author must express his regret at not having been able to consult either what Mr Ward considers to have probably been the first work on international law treated as a science, viz. the treatise of Succaria in proof of the unlawfulness of the execution of Conraddin[2], or the work of Gerohus which was referred to in the Introduction; but the various commercial codes, the compilation of which so distinguished the 13th and 14th centuries (the Consolato alone excepted) did not directly contribute to the extension of principles of maritime international law[3]. It was after the revival of

[1] *Etymol.* Lib. v. c. 6. [2] Vol. II. p. 259.

[3] "The Consolato differs from other maritime codes of the middle ages, in being the only one where there are distinct

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learning, occasioned by the rise of the university of Bologna, that international law became studied in a scientific manner, and this was mainly as a result of the eagerness with which the Roman and Canon laws were then cultivated; but it was only incidentally studied in connexion with questions of civil law, and not as an entirely separate and distinct branch of jurisprudence. Many of the remarks contained in the preceding chapter will have corroborated what Grotius says on this point, that before his time no one had treated of the entire subject in a connected manner[1]; and when he wrote, as Mr Ward observes towards the end of his valuable work, the law of nations "was a vague and indeterminate phrase in everybody's mouth, but with few precise ideas annexed to it. It consisted, as we have observed in the various discussions we have had occasion to review, of a string of undigested precedents; the facts even of which were but little understood, so that they might be made to bend almost every way that suited the purpose of those statesmen who affected to take them for their guide[2]." The scattered international maxims of the middle ages had indeed been productive of much good. They had procured great relaxations of the severities of war, and had laid the foundation of the present system of national intercourse in time of peace, so that when

regulations on points connected with the Law of nations." Manning's *Law of Nations*, p. 12.

[1] *De Jure Prolegomena.*

[2] Vol. II. p. 606. Kent's *Commentaries*, Part I. §§ 1, 16.

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Grotius had collected those maxims which were generally acknowledged, and established on a proper footing such as were then ill-apprehended or inaccurately laid down, he gave international law a distinct form, and one which it has since retained; but he certainly did not promulgate a new set of principles, or originate an entirely new branch of moral science. Since the middle ages nothing new has been added to it. It has only been better arranged and laid down in a more comprehensive manner: and accordingly in this Essay illustrations have in preference been sought in that period when our international law was first established, and its principles were fixed and determined.

The wars of the long-disputed Neapolitan succession gradually drew together France, Spain, and Italy; and towards the close of the 15th century there appeared six great powers in the western half of Europe; the Papacy, the Empire, France, England, Spain, and Venice. The crowd of States which are found in the maps of the middle ages disappear in a great measure, and these six powers really decided all the important questions of the day. Changes soon affected these: the altered policy of Venice after the League of Cambray led her to disentangle herself from active participation in political transactions, and the influence of the papacy soon ceased to be such as to enable the popes to take an independent part in passing events. The reign of Charles the fifth, and the close union which afterwards subsisted between the two branches of the house of Hapsburg,

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caused remote nations of Europe to form intimate relations with each other, and consequently led to the extension of the international usages of the South and West of Europe to the North and East. This was greatly facilitated by the various great discoveries which took place in that age[1].

The British Isles, and especially England, had from ancient times an extensive commerce with the Low Countries, the Hans Towns, and the Scandinavian kingdoms. The two last of these were connected with Livonia, Courland, Poland, and Russia. France had given sovereigns to Hungary, and the Thirty Years' war led to the formation of an alliance between France and Sweden; and already a century earlier England had formed a commercial alliance with Russia. Thus were the different states of Christendom brought together, and thus about two centuries ago, especially after the Peace of Westphalia and the scarcely less important treaties of the Pyrenees, Oliva, and Copenhagen, they formed that system of states which they now constitute. France was the first country to enter into an alliance with Turkey[2], and Sweden[3] also

[1] See notices of progress of maritime international law in Azuni's *Systeme du Droit Maritime de l'Europe*, Tom. I.

[2] "Les Français sont les plus anciens allies des Turcs." Mably, *Droit Public de l'Europe*, Lib. I. ch. 5.

[3] "Les Suédois, occupés pendant long-temps à faire la guerre à la Pologne et à la Russie, ont senti l'importance d'entretenir à Constantinople des rélations, qui donassent de la jalousie à leurs ennemis, et leur fissent toujours craindre quelque diversion de la part des Turcs." Ibid.

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during her long Polish and Russian wars formed amicable relations with that country. The connexions of Hungary and Poland with Turkey were brought about by war; but at this early period Turkey had not made any advances towards the international law of Christendom.

It has been already shown that the Crusades were the first event that brought the Christian nations of Europe in contact, and as friends. The Reformation was the second, but then two great divisions, those of the Catholic and Reformed faiths, divided Europe. As a general rule states of the same faith acted together, but with some exceptions: various circumstances caused France and Portugal with more or less of design and ability to aid the latter; while Denmark and Saxony afforded some assistance to the former. The Peace of Westphalia terminated these disputes and prepared the way for the exaltation of Prussia, "the child of the Reformation[1];" whose power it has ever been the political aim of Protestantism to elevate, and of Roman Catholicism in various forms and ways to lessen.

In the south of Europe, then, the maxims of international law of the dark ages were first through the influence of Christianity developed and consolidated into the international usages of the middle ages. The peculiar constitution of the Empire and its widely extended relations with European countries caused its influence to be effectually added to that of the papacy in extending and

[1] Wheaton's *History of the Law of Nations*, p. 70.

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developing those public principles which owing to the direct influence of Christianity and its indirect influence through chivalry, the feudal system, and the peculiar kind of learning which prevailed in all the Christian countries of western and central Europe, gradually during the period from the ninth to the seventeenth century established a uniform system of international usages in those countries[1]. In the North and East these circumstances did not so strongly operate or lead to such beneficial results. The Scandinavian kingdoms after their conversion were too much occupied with their own affairs to interfere in those of other countries; and the independent states east of the Baltic, the remoter Hans Towns, and the great military Orders, derived much of their international law from the Empire, but did not possess sufficient power to be influential abroad. The conversion of these territories was very late; Prussia proper, which formed part of the dominions of the Teutonic knights, was only converted in the thirteenth century[2], and Lithuania still later[3]. Poland de-

[1] Professor Ozonam, after showing how the national feeling of the different countries of western Europe successfully resisted Charlemagne's attempt to found a universal monarchy, says, "Mais le nom de l'empire, la doctrine de ses juris-consultes, la popularité même de ses poëtes, servirent à maintenir l'union des peuples occidentaux, à fonder parmi eux le droit international, à y naturaliser le droit Roman, à former cette famille puissante qu'on appelait la Latinité, que fit les Croisades, le chevalerie, la scolastique, toutes les grandes chose du moyen age." *Civilisation Chrétienne des Francs*, p. 371.

[2] Ward's *Law of Nations*, Vol. I. pp. 164, 165.

[3] Krasinski's *Religious History of the Slavonic Nations*, p. 199.

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rived its adoption of the international law of western Christendom through its connexion with the empire and with Bohemia. And Russia, which had derived hers from that of the eastern empire[1], an almost perfect one, as we hope to show in a succeeding chapter, did not come under the beneficial influence of those peculiar institutions and circumstances which so materially aided the advancement of the international law of western Christendom; added to which, her long wars with Mahometan Tartars exercised a more prejudicial effect than even the barbarian conquest did in other parts of Europe. By these means it was not till after the Reformation that she formed any relations with the countries of the West.

There is one other circumstance that should be mentioned. It must have been evident that the vast efforts, as recorded in the last chapter, made by the Church, especially in the eleventh, twelfth, thirteenth, and fourteenth centuries, to improve the public law of that period, were not attended with any great immediate result, and it would be useful as well as interesting briefly to inquire how this occurred. We shall find that it was mainly owing to the peculiar character of the wars that then ensued from which few good results followed, though the Crusades had been attended with many advantages. The English wars with France, of one hundred and twenty years duration, were productive of very great evils[2], and the contemporary events or those immediately

[1] Ward, Vol. I. p. 164.

[2] "It was a struggle of 120 years, interrupted but once by

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preceding them, in Spain, Germany, and Italy had the like result, especially the Papal pretensions which occasioned the long struggle between the Guelfs and the Ghibelins, and the Hussite wars. In the East the progress of the Tartars and Turks had even a worse effect, and the kingdoms of the North were taken up with the troubles consequent on the dissolution of the union of Calmar. This is the brief explanation of the retrograde movement which took place, and which postponed any decided improvement in international law until the time of Grotius. Christendom had then become settled down into its present form, and the ill-defined maxims of preceding times were then generally though vaguely known and recognised, so that when Grotius published his great work[1] he exactly fulfilled the requirements of

a regular pacification, where the most ancient and extensive dominion in the civilized world was the prize."……The war of Edward "was like a great tournament, where the combatants fought indeed *à outrance*, but with all the courtesy and fair play of such an entertainment……If we could forget, what never should be forgotten, the wretchedness and devastation that fell upon a great kingdom, too dear a price for the display of any heroism, we might count these English wars in France among the brightest periods in history."……In the war of Henry "we find little left of that generous feeling which had, in general, distinguished the contemporaries of Edward III. The very virtues which a state of hostility promotes, are not proof against its long continuance, and sink at last into brutal fierceness." Hallam's *Middle Ages*, ch. 1, pt. 2.

[1] "The book may be considered as nearly original, in its general platform, as any work of man in an advanced stage of civilization and learning can be. It is more so, perhaps, than

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his age. Much of what he wrote, as might be expected, is now no longer applicable; but no writer in a position similar to that which he occupied in regard to his subject can be called his equal.

those of Montesquieu and [Adam] Smith." Hallam's *Literature of Europe*, Part 3, ch. 4.

"A work which we now, indeed, justly deem imperfect, but which is perhaps the most complete that the world has yet owed, at so early a stage in the progress of any science, to the genius and learning of one man." Mackintosh, *Law of Nature and Nations*.

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CHAPTER IV.

The Influence of Christianity upon the other sources from whence the International Law of Christendom has been derived.

THE *nature* of the influence of Christianity itself, and of the institutions immediately derived from it, on the international law of Christendom having been now discussed, before proceeding to trace its *extent*, it will be necessary to examine into both the nature and extent of the influence it has also exerted on the other sources from whence that law has been derived, as well as to offer a few incidental remarks respecting them.

We shall therefore make some observations on:

I. The Roman law[1] and certain international decisions of antiquity.

[1] "We may venture to say that a large part of international law grew out of the Roman law. For the Roman law was the law of the whole civilized world, after the establishment of the empire, and was studied by a great body of lawyers in every country; and was by them accepted and represented as the genuine dictates of natural justice. When therefore the empire was again divided into separate states, it was natural that in all transactions between states the jurists should be referred to, and should decide the matters in question by the application

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II. The feudal system.
III. Chivalry.
IV. Stipulations of treaties, conventions, and declarations.
V. Disputes relative to national rank and claims of precedence[1].
VI. The extension of commercial relations.
VII. The influence of the writings of publicists: and
VIII. The general progress of civilization.

These have in different ways and in different ages severally exerted a very powerful influence upon international law, and their combined effect has produced that particular form of it now observed in Europe and the countries of the New World.

I. The principles of the Roman law were established before the promulgation of Christianity, and the

of the principles and maxims of the Roman law. It was an immense step towards a code of international law, really consistent and just, to have, already formed and current, a body of fundamental maxims, and a fixed technical phraseology, in which they could be applied and discussed. And it has, I think, continued to be true up to the present time that, with regard to a large portion of international law, those persons have reasoned most clearly and conclusively who have been *jurists* in the usual sense, and have made the study of the Roman jus the basis of their scheme of international jus." Whewell's *Lectures on Systematic Morality*, pp. 159, 160.

[1] These four last are taken from Mr Ward, Vol. I. ch. 11, *On the Influence of Particular Institutions.*

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writings of the eminent Jurists who lived in the first centuries of our era, Gaius, Ulpianus, Julianus, Paulus and Modestinus, were probably in no way influenced by the Christian code of morals. The improvements Christianity effected in course of time in Roman jurisprudence, did not extend to that portion of it which has contributed so largely to international law, and which in reality was susceptible of but little improvement. The new ecclesiastical laws necessarily changed all older legislation of that nature, and the other alterations brought about by the influence of Christianity, though even more extensive than these, were indirect and exclusive in regard to the personal law of ancient Rome. "Its influence is even more remarkable in the changes which were suggested by its spirit, rather than introduced as a necessary part of its system. To the community which citizenship had bound together, succeeded another bound by the ties of a common religion. The tendency of the change was to remove the barriers which had formed part of the older condition of society. If we compare the Institutes of Justinian with those of Gaius, we find changes in the law of marriage, in that of succession, and in many other branches of law, in which it is not difficult to recognise the spirit of humanity and reverence for natural ties, which Christianity had inspired[1]." The Roman law, as well as other remains of Roman civilization in the West, owes its pre-

[1] Sandar's edition of the *Institutes*, p. 29.

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servation to the influence of Christianity on the nations which conquered the western empire; who by means of the more humane views they acquired on their conversion, permitted the conquered to retain their laws and customs. In this manner a knowledge of the civil law was preserved though obscurely through the dark ages[1], and when international law became a subject of study, many of the earlier publicists were men well acquainted with the former, who (as will be pointed out hereafter) incorporated into their works many of its maxims, and also adopted many decisions of antiquity, thus making them to form part of modern international law. "The professors of the famous school of Bologna were not only civilians, but were employed in public offices, and especially in diplomatic missions, and as arbiters in the disputes between the different states of Italy[2]:" and, as Mr Wheaton further remarks, whatever opinion may be formed of the conduct of the four doctors of that University who, in 1158, were arbiters between the emperor Frederic and the cities of Lombardy, in regard to that monarch's claims to be the successor of Augustus and Charlemagne, and as such to possess their powers, yet "the fact of their being consulted as judges and arbiters of sovereign rights, shows the growing influence and authority of the civilians

[1] Savigny's *Account of the Roman Law during the Middle Ages.*

[2] Wheaton's *History of the Law of Nations*, p. 32.

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as the interpreters of the only science of universal jurisprudence then known[1]."

II. The feudal system[2], which was founded on the national usages of the invading nations, and which was the natural development of their political organisation, became, in the course of the 10th century, gradually and nearly simultaneously adopted throughout western Europe; and probably obtained and preserved the great ascendancy it acquired, on account of the political and ecclesiastical divisions of the government being on their conversion kept quite distinct. The influence of their newly adopted faith was always in opposition to the feudal system[3], but operated at different times in different ways, at one period by seeking to invest its ceremonies with a religious sanction, at others, by constant efforts to ameliorate the social condition of the people, and to inspire the temporal authorities with milder sentiments[4]. The crusades also, by diminishing the number of fiefs, greatly assisted the breaking up of

[1] Ibid. p. 33.

[2] Guizot, *Civilisation en Europe*, 3eme et 4eme Leçons.

[3] "Ce qui etonne dans les origines de la féodalité, c'est de n'y trouver rien de Chrétien. Le Christianisme sacrait les rois, il affranchissait les peuples; on ne voit pas qu'il ait rien fait pour affermir le pouvoir des nobles. Sans doute il finit par bénir la chevalerie, par lui ouvrir la lice des croisades et les cloîtures guerriers du Temple et de l'Hôpital; mais il ne pouvait consacrer le principe païen de l'inégalité des races." Ozanam, p. 374.

[4] Guizot, 6eme Leçon.

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the system[1], which at length passed away; its principal effect having been to give a certain degree of regularity to the almost indiscriminate hostilities which had prevailed before its rise.

III. The influence of Christianity, and of the other causes which led to the amelioration of the evils caused by the disorders of the feudal times, showed themselves more especially in the institution of chivalry, "one of those grand institutions of the middle ages, which has subsequently received the almost unqualified praise of all men irrespective of their political opinions, and which has left us imperishable monuments of its happy influence and power[2]." We may accept Mr Digby's definition of chivalry, "that general spirit or state of mind which disposes men to heroic and generous actions, and keeps them conversant with all that is beautiful and sublime in the intellectual and moral world[3]." As such chivalry must always exist, and its age can never be said to be gone for ever; traces of it are thus to be found in every country and age, though owing to peculiar circumstances it may be found in a more prominent form and manner at one period than at another. The feudal system especially gave rise in a great measure to what is now generally known by us as the age of chivalry[4]. The good

[1] Ibid. 8eme Leçon.

[2] *Temporal Benefits of Christianity*, p. 255.

[3] *Godefridus*, p. 89.

[4] "Chivalry owed its peculiar development in western Europe to the feudal system, and the various circumstances

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point in that system was the development it gave to domestic and family life, and this led to the general rise and extension of chivalrous sentiments and manners.

Christianity exerted a great influence upon chivalry. "A knight, whenever present at mass, held the point of his sword before him, while the gospel was read, to signify his readiness to support it. Writers of the middle ages compared the knightly to the priestly character in an elaborate parallel, and the investiture of the one was supposed analogous to the ordination of the other. The ceremonies upon this occasion were almost wholly religious. The candidate passed nights in prayer among priests in a church; he received the sacraments; he entered into a bath, and was clad with a white robe, in allusion to the presumed purification of his life; his sword was solemnly blessed; every thing in short was contrived to identify his new condition with the defence of religion, or at least of the Church[1]." This is further shown by the oath taken when the rank of esquire was conferred. "I swear to fear, revere, and serve God religiously, to combat for the true faith; to suffer death rather than renounce Christianity; to serve my Lord faithfully; to maintain the rights of the feeble, the widows, and the orphans; to offer no wilful or deliberate offence to any one; never to be engaged in any transaction for the pure love of sordid gain; and to guard inviolably

and incidents connected with it." Bishop Hurd's *Second Letter on Chivalry*.

[1] Hallam's *Middle Ages*, ch. 9, pt. 2.

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the received faith of society[1]." It is thus seen how essential a part of any development of chivalry Christianity was. Its general principles doubtless could exist and have existed, apart from any intermixture of the Christian religion, from the very nature of man[2], but never except when associated with that religion has chivalry assumed a permanent or settled form.

IV. From the age of Charlemagne[3], treaties, which in modern times have been so numerous, began to be headed with the invocation of the Trinity, and thus a religious obligation to their observance was added to the moral duty of truthfulness; which the Church not unfrequently increased, by holding out the penalty of excommunication against those who refused to comply with the terms of the treaties they had entered into. And some

[1] *Temporal Benefits of Christianity*, p. 256.

[2] This is exemplified in the conduct even of Mahomet of Ghuzné on the occasion of his war with the Bowides, when he declined to take advantage of a minority and female regency to carry on the war he intended to wage against that dynasty. Gibbon's *Decline and Fall*, ch. 57.

[3] Du Mont, *Treatises, &c. from the age of Charlemagne*, T. I. This applies also to other of the public documents of his reign. His declaration of protection to the papacy commences "In nomine Christi." A rescript to the emperor Nicephorus respecting the peace between the two empires, begins, "Cum in omni humanæ actionis initio Domini sit auxilium invocandum, maxime in hoc, quod modo inter nos Deo mediante agitur, negotio, Domini et Salvatoris nostri Jesu Christi omni modo sunt imploranda suffragia, ut qui nomine illius signati sumus," &c., and the decree for the division of his territories, "In nomine Patris et Filii et Spiritus Sancti."

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of the Border conventions between England and Scotland commence with greeting "To all Christian people to whom these may come[1]."

V. When, in the course of the middle ages, states began to have more frequent intercourse with each other, questions of mutual rank naturally arose[2]. The empire claimed to be the representative of ancient Rome, and consequently asserted supremacy over, and required precedence of, all other powers. The papacy likewise advanced its claims to universal precedence, and other states had their disputes on this subject; but amongst the latter, priority of conversion to Christianity was the circumstance which had most weight in determining these questions[3].

VI. The insecurity which everywhere prevailed in the dark ages destroyed commerce, and led to the decay of all branches of manufactures; but when order became somewhat restored, and liberty revived in the Italian cities, commerce again sprang up, and manufactures again flourished[4]. It is beyond the limits of this dissertation to make further mention of the great commercial cities and marts of the middle ages, which gradually extended from Italy and the shores of the Mediterranean

[1] Nicholson's *Border Laws*.

[2] Ward's *Law of Nations*, ch. 16.

[3] "With respect to the priority of conversion to *Christianity*, almost all the writers concur in acknowledging it as a very weighty reason for precedency." Ibid. Vol. II. pp. 371, 372.

[4] Robertson's *Charles the Fifth*, § 1, Introductory.

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to Flanders and the Baltic, than to state that the improvement in the social condition to which they owed their origin is to be attributed to the beneficent influence of Christianity. This has therefore afforded the basis on which has been founded the enormous extension of commerce and the improved facilities of communication discovered or invented in modern times. This extension of international intercourse was greatly facilitated by the pilgrimages so much observed in the middle ages, as well as by the zeal of pious missionaries, which led them to visit all regions of the earth[1] for the holy purpose of promulgating the Christian faith among the heathen. They and the clergy in general were the best defenders of the rights of the inhabitants of newly discovered countries, and often the pioneers of civilization: whilst their exemplary conduct obtained for them a considerable influence with the natives, and restrained in some measure their own countrymen, who by their conduct too often reflected but little credit either on the religion they professed, or on the enlightenment and civilization of which they were so ready to boast.

VII. The general authority which the writings of publicists have obtained, and the great influence they have had on the international law of Christendom, will properly cause them to be here regarded as one of the distinct sources from whence that law has been derived. So important did this influence appear to Mr Ward, that

[1] Spanish America, the Pacific Islands, Africa, and Greenland, are more particularly referred to here.

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he considers it to be decisive of states being under the government of the same law of nations, if they search "for the rule of their duty *in the same codes of Jurisprudence*," and, "pay respect to the opinions of the same writers[1]." The Christian religion has exerted a powerful influence on these treatises, for the earlier writers on international law, the publicists who drew up many of its rules, were persons especially susceptible of and most likely to write under its influence. Bonnor, Victoria, Soto, and Suarez were eminent members of the Roman clergy[2]; and above all it must be remembered that Grotius was one of those learned men who after examining the evidences of the Christian revelation have been convinced of its truth. He had composed his treatise *De Veritate* in Dutch verse, as well as a commentary on the New Testament, some years before he wrote his great work *De Jure Belli ac Pacis*[3], which everywhere shows the Christian principles of him, who, in an age when the most extreme party spirit prevailed, wrote with candour and truth of his bitterest opponents, and in his life illustrated the precepts of the religion he professed.

Subsidiary to the influence of publicists, may be placed that of those eminent Christian philanthropists who have

[1] Vol. I. p. 161.

[2] An account of Bonnor's *Arbre des Batailles* has already been given, the works of the three last are mentioned in Hallam's *Literature*, Part 2, ch. 4, and in the Introduction to Wheaton's *History of the Law of Nations*.

[3] Butler's *Life of Hugo Grotius*.

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visited the different nations of the earth, and have endeavoured to alleviate misery and succour the distressed. Among the most distinguished of these is John Howard, whose labours first caused the name of his native land to be known to the inhabitants of the distant regions of the Mæotis, and caused all the nations of Europe to honour the country of which he was a subject. The actions of such persons as Howard show that internationally as well as in social and domestic life, to follow out unhesitatingly the precepts of Christianity would produce better results than the victories of any conqueror, and be attended with better fame and truer glory to the person himself.

VIII. M. Guizot states[1] that civilization consists, 1st, in the development of man himself as an individual, and, 2nd, in the development of the visible condition of mankind, or of society. It is of the latter, so far as it concerns the subject of this Essay, that a few observations will be made here.

Modern European civilization owes its present form principally to the impress which the influence of Christianity gave to the manners and customs of the nations which subverted the western empire. The precepts of Christianity gradually obtained a general influence over all their actions, and thus were often even unconsciously

[1] It consists, "d'une part, dans le développement de l'homme lui-même, de l'individu, de l'humanité; de l'autre, dans celui de sa condition visible, de la société." *Civilisation en Europe*, 4eme Leçon.

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applied to the ordinary transactions they engaged in. Owing to this influence they certainly displayed a greater degree of regularity, equity, and benevolence than is generally to be found in the conduct of other communities, whether of ancient or of modern times[1].

[1] The Christian religion has had so powerful an influence upon the law of nations, "that wherever it has existed, it has gone the farthest of all causes to introduce notions of humanity and true justice into the maxims of the world. The great proof of which is, that if we compare the conduct of Christian nations with that of nations professing any other religion, (whatever may be their stages of improvement, or in whatever era of their glory,) the result I believe will be uniform and universal, that the one will be eminent over the other for regularity, equity, and benevolence." Ward's *Law of Nations*, Vol. II. p. 2, illustrated by the conduct of the Greeks, Romans, Carthaginians, Mahometans, and Chinese. People "who may yet be denominated savage," are purposely left out of consideration.

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CHAPTER V.

The extent of the Influence of Christianity upon the International Law of Christendom in regard to the Pacific Relations of States.

In order to show fully the extent of the influence of Christianity upon the international law of Christendom, it is necessary to treat of the several divisions of international law; and, for the better elucidation of this part of the subject, to state whence those portions of it are derived which do not owe their origin to its influence.

Nations, as such, possess certain rights; in other words, there are certain rights which belong to them in their capacity of nations. Some of these are entirely and exclusively international rights, others belong also in a greater or less degree to another branch of morality, Polity; but, for the sake of clearness, as well as to render this Essay more complete, they will all be treated of here, and will be considered to be four, viz. the rights of Independence, of Equality, of Property, and of Intercourse. The modifications they undergo during war, and the rights which war itself gives rise to, will form the subject of the next chapter.

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I. *The International Rights of Independence*[1].

These rights may be classed under two subdivisions, those of security and of jurisdiction. The first comprises those which every independent nation possesses, of choosing its form of government and civil institutions, of developing its resources, and settling all questions respecting its military and naval forces, without any interference or intervention on the part of other states. This is only limited by those of other nations, whether they are such as immediately arise from their own rights of independence, or from treaty stipulations; it not being lawful for any nation, under pretext of merely exercising its own rights, to injure other states, or to pursue a line of conduct calculated to affect injuriously their corresponding rights.

The influence of Christianity upon this subdivision of the rights of independence has arisen from the respect it specifically enjoins for the rights of others, whereby the frequency of active interferences in the affairs of other countries has been much diminished; for, by comparing the conduct of Christian European states, notwithstanding the constant and intimate relations they maintain with each other, with that of other nations, the Greeks and Romans[2] for example, it is easy to perceive the different effects of the maxims

[1] Wheaton's *International Law*, Vol. I. p. 131.

[2] Ward's *Law of Nations*, ch. 6. Montesquieu, *Grandeur et Decadence des Romains.*

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which in this respect influence their conduct. The frivolous and unjust grounds on which *they* would interfere, stand in strong contrast to the conduct of modern states; for though these may often evince an equally strong desire for interfering, they are restrained by the necessity now felt of having at least a plausible excuse for so doing. The wars for the maintenance of the balance of power, which are in a great measure peculiar to the system of modern European policy[1], owe nevertheless, as will be shown hereafter, the mildness with which they, as well as other European wars have been carried on, to the influence of Christianity upon the international rights of war.

The right of jurisdiction has for its basis the general rule that every independent nation is supreme within its own territories, and that its laws not only bind its own subjects or citizens, but also aliens so long as they remain there; the exceptions to this force of national laws as regards aliens, whether as to those exempted from their operation by maxims of international law, or by treaty, are primarily derived from the sovereign power of the state itself.

An[2] important part of this right has reference to those questions which arise respecting transactions that have taken place in foreign countries, (especially

[1] The conduct of the Greek states in the Peloponnesian and Theban wars seems to indicate that they were acquainted with what has since been called the balance of power.

[2] Storey's *Conflict of Laws*, ch. 1.

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between subjects of different nations,) when the validity of such transactions is called in question, or when the laws of the country in which they are sought to be enforced, differ from those of the country where they took place. How these "Conflicts of Laws" were settled in the Roman Empire, there is now no means of deciding; but on the conquest of the different countries of Western Europe by the nations which subverted the Western Empire, the vanquished were in a great measure permitted to retain their respective laws and customs; so that rules had at length to be devised to meet the difficulties occasioned by the divergences of the different codes of laws which in this manner simultaneously prevailed in many countries, and these rules were, in course of time, extended in application to cases of international conflicts of laws.

The influence of Christianity, as regards the former portion of this subdivision, is to be traced through its previous influence on the progress of civilization, the extension of commerce and international intercourse, and the rules on this point laid down by jurists and publicists. Its influence, as regards the latter portion, is derived from its having afforded the basis from whence that has since been developed, viz. the consideration Christianity caused in most parts of Europe, on the fall of the Western Empire, to be shown to the vanquished nations, and the results to which this led. The extent of the influence of Christianity upon the international right of jurisdiction has thus been; first, to afford the basis from

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whence it has arisen; and secondly, by its influence on civilization, and the facilities it caused to be afforded to commerce, to occasion the extension of this right to international questions.

II. *The International Right of Equality*[1].

Sovereign states being independent of each other, further reasoning showed that they must also be considered equal to each other. "Puisque les hommes sont naturellement égaux, et que leurs droits et leurs obligations sont les mêmes, comme venant également de la nature, les nations, composées d'hommes, et considerées comme autant de personnes libres qui vivent ensemble dans l'étât de nature, sont naturellement égales et tiennent de la nature les mêmes obligations et les mêmes droits. La puissance ou la foiblesse ne produisent à cet égard aucune difference. Un nain est aussi bien un homme qu'un géant: une petite république n'est pas moins un état souverain que le plus puissant royaume[2]." This international right has often been modified either by treaty or usage, but the importance of those pretensions in respect to national rank, &c. which have so often been the subject of dispute has now in a great measure passed away, and the equality of nations is becoming more clearly recognised. This is

[1] Vattel, *Law of Nations*, Tom. I. Liv. ii. ch. 3. Wheaton, Vol. I. Part 2, ch. 3.

[2] Vattel, Preliminary Observations, § 18.

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especially shown in the use of the *alternat* in diplomatic documents, which is now almost universally adopted.

The influence of Christianity on this right has mainly operated by means of its influence on the writings of those publicists who have investigated and given decisions respecting the principal questions of international law.

III. *The International Right of Property*[1].

This right, as regards states, comprises their right to the national territories, and all questions arising from it, including those relative to the dominion of rivers, lakes, and portions of seas[2].

This part of international law is the one which has been least affected by the direct influence of Christianity: most of, and all its justest rules, having been derived from the clear and equitable maxims of the Roman law[3].

The extent of the influence of Christianity upon this part of the subject has been from the preservation it obtained for the Roman law. The international right

[1] Wheaton, Vol. I. pt. 2, ch. 4.

[2] Grotius, Lib. II. esp. chs. 2, 3, 4, 6, 8, and 9. Puffendorf, *Law of Nature and Nations*, Lib. IV. chs. 3—9.

[3] Whewell's *Lectures on Systematic Morality*, p. 160, after the passage before quoted respecting the influence of the Roman law, "This may be said more particularly of certain parts of international law, especially those parts which refer to international rights of property and treaty."

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of property as regards individuals domiciled, or possessing property in foreign countries, owes its present form to the progress of civilization, by which aliens have acquired the liberty of possessing property in foreign countries and great facilities for employing their capital or labour there, in industrial undertakings or commercial speculations, as well as considerable freedom of access to foreign navigation.

The existence of these rights necessarily presupposes a considerable previous extension of international intercourse; yet after that has taken place these may be long withheld.

IV. *The International Right of Intercourse*[1].

This right will be treated of in the same manner as the last, viz. 1st, as regards the relations of states with each other; and 2dly, as regards individual members of different communities.

Its first branch comprises the regulations under which the ceremonial and etiquette attending the intercourse, and especially the diplomatic intercourse, between different states is carried on, including what are sometimes called rights of legation; and all questions respecting the powers, credentials, and privileges of public envoys, and the manner in which they transact the business entrusted to them. Treaties are the most

[1] Whewell's *Elements of Morality*, Vol. II. arts. 1117–1125. Wheaton, Vol. I. pt. 3.

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important part of this branch of international right of intercourse. The constitution of each nation determines in whom the power of concluding treaties on its behalf is vested, and every foreign nation each for itself must pay due regard to this part of the institutions of other states, and act in accordance therewith.

The extent of the influence of Christianity upon this international right, as it has already been observed, probably led to the introduction of resident embassies, and diplomatic congresses. The ceremonial attending their action necessarily has for its ultimate basis the influence which gave rise to these: its proximate origin, however, is to be attributed partly to convenience and partly to the rival claims of states for pre-eminence of rank, and all the questions occasioned by disputes relative to those claims. The nature of the influence of Christianity on treaties has already been mentioned: the rules for their interpretation have been in a great measure derived from the Roman law[1].

We now have to consider that branch of it which relates to cases concerning individuals, members of different communities. It is unnecessary here to discuss the rules which probably regulated the intercourse of the different nations of antiquity, because their civilization and the state of things which then existed, almost entirely disappeared amidst the disorders which attended the

[1] Whewell's *Lectures on Systematic Morality*, p. 160, quoted above. These rules may be found at length in Vattel, Tom. I. Liv. II. ch. 17.

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downfall of the western empire. The influence of Christianity as regards the treatment of strangers has enabled them to visit foreign countries with safety; the facilities and privileges they have acquired there, whether to be classed under this or any other international right, are proximately derived from the influence of civilization, of treaties, and the extension of commerce; the influence of Christianity upon all of which has already been mentioned. It must be observed, in conclusion, that a great part of this right, as developed in modern times, is to be derived from the love of personal liberty characteristic of many of the northern nations[1]; a principle, the existence of which as modified by Christianity, is essential to the real progress and advancement of nations in the higher stages of civilization.

[1] Guizot, *Civilisation en Europe*, 2^eme^ Leçon.

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CHAPTER VI.

The Influence of Christianity upon the International Rights of War.

It has been already shown, how the degree of regularity which the feudal system first gave to the warfare of modern Europe was increased by the influence of the Church. When international law became in the sixteenth century[1] to be more scientifically studied, it was to this portion of it that the earlier treatises were principally directed[2].

[1] Hallam's *Literature of Europe*, Pt. 2, ch. 4, § 6.

[2] The following are the treatises relating to international law contained in the sixteenth volume of the collection entitled *Tractatus Tractatuum.*

B. Capolla of Verona, *De Imperatore Militum delegando.*

Joan. Lupus of Segovia, *De Bello de Bellatoribus.*

Martinus Laudensis, *Be Bello.*

F. Arias, *De Bello et ejus Justitia.*

P. Bellini of Alba (Piedmont), *De re Militari et de Bello.*

Joan de Lignana of Milan, *De Bello.*

Paris à Puteo, *De re Militari.*

Claudius Catereas of Turin, *De Jure et Privilegio Militum.*

In the eleventh volume, part 1, of this collection, are two treatises, in which some questions of international law are discussed, but much mixed up with municipal law; their titles are:

De Treuga et Pace, Octaviano Velpelli.

De Fide Treuga et Pace, Nicolai Moroni Gualdensis.

It may be repeated that the title of Bonnor's work was *L'Arbre des Batailles.* Victoria wrote a "Relectio," quoted in

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The international maxims of the middle ages were naturally very different from those of the present day, and any nation which should revert to practices regarded as blameless by the imperfect law of those times, but which the juster views of more enlightened ages has condemned, would offend against public morality, as much "in kind" if not "in degree," as one which should revert to practices sanctioned by the international law of Assyria or of Rome. For international law gradually improves by the adoption of progressive standards of morality and by the progress of civilization; and every nation is morally bound to further that improvement, especially as regards the rights of war, by every means in its power[1].

Gentili's definition of war will be the one adopted here, "Bellum est contentio publica armata justa." The class of cases in which alone war can be termed "contentio justa" may be best stated in the eloquent words of a late distinguished English jurist; "War is just only to those by whom it is unavoidable; and every

this Essay, *De Jure Belli*. Ayala termed his treatise *De Jure et Officiis Bellicis et disciplina Militari*. Gentili's great work was *De Jure Belli*, and the rights of war are discussed at considerable length by Grotius.

[1] Nations "may, and ought not only themselves to observe, but to enforce, all the moderation practicable, and particularly abstinence from all hostilities, which are not necessary for the attainment of the object of the war, and particularly from those which have no other tendency than to gratify animosity." Reddie, *Maritime International Law*, p. xviii.

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appeal to arms is unrighteous, except that of a nation which has no other resource for the maintenance of its security or the assertion of its honour[1]." Or as Victoria says, "Unica est, et sola caussa justa inferendi bellum, injuria accepta[2]."

The object of all wars is to procure peace[3], and in war especially it is necessary to be mindful of, and to act upon those two great principles which Montesquieu so correctly and concisely states: "Les diverses nations doivent se faire dans la paix le plus de bien, et dans la guerre le moins de mal qu'il est possible, sans nuire à leur véritable intérêts. L'object de la guerre, c'est la victoire; celui de la victoire, la conquête; celui de la conquête, la conservation. De ce principe et du précédent doivent dériver toutes les lois qui forment le droit des gens[4]." Only those rights which truly follow from these principles are really rights of war: all others, howsoever and by whomsoever advanced, are in reality nothing more than the unwarranted pretensions of abused power, or the dictates of ill-informed writers, or of the unscrupulous adherents of a party cause. The influence of Christianity on the causes which give rise to wars has already been explained. In this chapter, after showing the modifica-

[1] Mackintosh, *Reasons against French War of* 1793, p. 1.

[2] Relectio VI. *De Jure Belli*, § 13.

[3] "Omnis enim homo etiam belligerando pacem requiret: nemo autem bellum pacificando." St Augustine, *de Civitate Dei*, Lib. XIX. ch. 12.

[4] *Esprit des Lois*, Lib. I. ch. 3. The third chapter of the tenth book is also very important.

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tions caused by war in regard to the four international rights of states in their pacific relations, the extent of its influence on the manner in which war is conducted will be next considered; and in so doing we shall treat first of land warfare, secondly of maritime warfare, and thirdly of the rights of neutrals.

SECTION I.

Modifications caused by war in regard to the International Rights of States in their Pacific Relations.

I. In regard to the international rights of independence. The first portion of this right, included under the term right of security, is entirely removed from the consideration of belligerents, so far as may be necessary for carrying on the war in which they are engaged. But it is only exceptional circumstances, cases of necessity, the detailed discussion of which does not properly come within the scope either of this, or of any other treatise on any portion of moral philosophy, that can justify any steps being taken, which shall permanently injure the right of security belonging to every state. In maritime warfare the right of jurisdiction assumes a peculiar form, as regards neutrals, which will be noticed when that part of the subject is discussed; but there appears no reason why, in cases where the conduct of the war is not concerned, the authority of the courts of the enemy's country should not continue the same as it was in time of peace.

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II. In regard to the international right of equality. This international right does not, properly speaking, undergo any modification from war, although the victorious state may sometimes be induced by its success to overstep, especially as regards this right, the strict limits of justice and moderation.

III. In regard to the international rights of property. These, as concerning states, have another added to them, viz. that derived from conquest, but are otherwise unaltered. So far as they relate to foreigners they will be noticed in the next paragraph.

IV. In regard to the international right of intercourse. This right, as observed in time of peace, ceases in a great measure between belligerent nations: but those subjects of each who may be domiciled in the enemy's country, except of course officials of the hostile government, by the present system of international law are allowed perfect security both of person and property, should they wish to remain there, and perfect liberty to depart, should they prefer adopting that course. In no case would it be allowable now to expel them indiscriminately; for such as offended against the laws of the country where they resided, would (unless it was otherwise provided for by treaty) be amenable to them. In the negociations which take place during war between the governments of the belligerent nations, the same faithfulness is to be observed as in those entered into in time of peace. "Private demands accruing before or during war may be recovered in time of peace; for war

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does not extinguish the right, but only suspends the remedy[1]." War however does not in the least affect the possessors (subjects of hostile states) of "property which is under the protection of the public faith[2];" though such property must either have been acquired before the declaration of war, or in those countries where its acquisition is prohibited, consequent on that declaration, before such prohibition takes effect. But during war, subjects of hostile powers resident in neutral states may carry on the same intercourse with each other as in peace, and those having commercial domicile in neutral states may trade with the enemy in the same manner as neutrals may.

SECTION II.

The International Rights of War[3].

I. As regards land warfare. The essential characteristic of modern warfare, the distinction now made between the combatant and non-combatant portions of the community[4], suggests that we should first consider the rights of war as they exist between combatants, and

[1] Wildman's *International Law*, Vol. I. p. 143.

[2] Ibid. p. 188.

[3] Wheaton, Vol. II. ch. 2.

[4] "In ancient Greece and Rome, every citizen was considered as a soldier; but in modern times, the *combatant* is distinguished from the *non-combatant* part of the nation, and there are different classes of rights of war applicable to these different classes of persons." Whewell's *Elements of Morality*, Vol. II. art. 1060.

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afterwards those which obtain between combatants and non-combatants.

1st. The international rights of war between combatants. The practice of modern warfare agrees with that of ancient Rome[1], in not allowing any persons unprovided with commissions, or not otherwise duly authorised, to engage with the enemy, by which means the number of combatants is determined. Limitations have been fixed to the weapons to be used in war, some being prohibited on account of the inhumanity which attends their use, such as disfigured balls, or the loading of cannon with nails and small pieces of iron[2]; others by the term "publica" in the definition above given, which excludes all clandestine methods of destruction, such as by assassination or by poison, but not those carried on by a portion of an army, and only temporarily concealed, as mines or ambuscades[3]. Quarter is now always to be given to those that ask it; and since the peace of Westphalia, Christian powers have, at the conclusion of peace, mutually restored the prisoners they may have made during the war; the custom of reducing them to slavery had ceased before that period[4].

2nd. The international rights of war between com-

[1] "No Roman could fight even for his country without a commission; which in all respects is similar to the modern notions, that those who so fight may be punished as robbers." Ward, Vol. I. p. 187. Wheaton, Vol. II. p. 85.

[2] Marten's *Law of Nations*, Book VIII. ch. 3, § 3.

[3] Whewell's *Elements of Morality*, Vol. II. arts. 1662, 1663.

[4] Manning's *Law of Nations*, p. 162.

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batants and non-combatants. As regards the non-combatant portion of the belligerent communities, provided they strictly maintain that character[1], the land warfare of the present day exempts them from all molestation or injury of any kind further than is strictly necessary to the prosecution of the war; it has hitherto been the custom, however, to subject them in many cases to *contributions*, generally pecuniary. It sometimes happens that their fate is bound up with that of the combatants, as in besieged cities, but in these cases all cruelty is forbidden and condemned; and an eminent military historian has expressed an opinion on this point which can be entirely adopted by publicists, viz. that "the plunder of a town after an assault should be expressly made criminal by the articles of war, with a due punishment attached[2]."

The wasting of the country, and the destruction of towns, or of property not contraband of war, whenever

[1] "In order that countries which are the seat of war may enjoy the advantage of the laws of civilized warfare, it is necessary that they themselves should attend strictly to the distinction of combatants and non-combatants. If the inhabitants of an invaded country carry on what is called a *guerilla* or *partisan* warfare against the invaders; the inhabitants, individually destroying them and their means of action, in any way that they can; such a country cannot be treated according to the more humane laws of war; for the inhabitants themselves destroy the foundation of such laws, the distinction of combatants and non-combatants." Whewell's *Elements of Morality*, Vol. II. art. 1071.

[2] Napier's *Peninsular War*, Vol. VI. p. 216.

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it cannot reasonably be expected to bring about an immediate peace, or be justified by extraordinary circumstances, is also condemned[1].

To the influence of Christianity on the manner in which land warfare is carried on, is to be ascribed the abolition of the custom which reduced captives to slavery, and the accurate and liberal distinction now made in Christendom between the combatant and non-combatant portions of communities. This distinction arose in western Europe from religious grounds, and owed its extension to the teaching of the Church, as has been shown in the first chapter. The author is well aware that a like distinction is to be found in many ancient eastern codes and systems of belief, but their precepts do not appear to have been generally observed, and at all events it is not from *them* that the international law of Christendom has in any way derived its classification of combatants and non-combatants.

The great change to be observed in international usage, as regards the former, owes its proximate origin to the customs introduced by chivalry; from which institution the modern practice of releasing prisoners on parole, as well as exchanges of prisoners, is probably derived[2]. But the usages of chivalry, like the modern code of honour, regarded only a class, namely, knights, and its obligations were in a great measure, if not entirely, binding only between them; and thus made no

[1] Wheaton's *International Law*, Vol. II. p. 82, § 6.

[2] Ward's *Law of Nations*, Vol. II. p. 179.

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effort to alleviate the condition of the great mass of prisoners who consist of the lower ranks of armies. Christianity however, by means of certain of its precepts, at length caused to be extended to all ranks those relaxations of the older and stricter rules of warfare, which chivalry had partially introduced[1]. The limitations of the weapons used in modern warfare is to be ascribed to the progressive adoption of more enlightened views of humanity incident on an improved civilization.

The declaration on express Christian grounds of the greatest of English statesmen against the employment of Indian auxiliaries in the American war of independence, is certainly based on Christian principles. It may be remembered that in the debate which arose in the house of Lords on the address to the throne, on the 18th of November, 1777, Lord Chatham in moving an amendment, reviewed the conduct of the war, and inquired who had "dared to authorise and associate to our arms the tomahawk and scalping-knife of the savage?

[1] "The influence of chivalry introduced some mitigation of the cruelties of war, but the occasional massacre of prisoners, and other gratuitous ferocities, show how slightly the understanding of humanity was as yet removed from barbarism. The laws of chivalry regarding usages in warfare were rather points of honour customary among knights, than precepts enjoined by morality and held obligatory as duties. Like the modern code of honour, they were mandatory between equals; when a noble knight was to be dealt with, all was exalted courtesy; but when the multitude was in question, it was a begrudged mercy that was in use towards the 'rascal rout.'" Manning's *Law of Nations*, p. 8.

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To call into civilized alliance the wild and inhuman inhabitant of the woods, to delegate to the merciless Indian the defence of disputed rights; and to wage the horrors of this barbarous warfare against our brethren." Lord Suffolk in reply defended their employment, and asserted that, besides "its *policy* and *necessity*, the measure was also allowable on *principle;* for that it was perfectly justifiable to use all the means that *God and nature put into our hands*." Lord Chatham thereupon immediately rose again and expressed his astonishment "to hear such principles confessed, to hear them avowed in this house, or in this country: principles equally unconstitutional, inhuman, and unchristian."

"My lords, I did not intend to have encroached again upon your attention: but I cannot repress my indignation—I feel myself impelled by every duty. My lords, we are called upon as members of this house, as men, as Christian men, to protest against such notions standing near the throne, polluting the ear of majesty. 'That God and nature put into our hands.' I know not what ideas that lord may entertain of God and nature; but I know that such abominable principles are equally abhorrent to religion and humanity. What! to attribute the sacred sanction of God and nature to the massacres of the Indian scalping-knife, to the cannibal savage, torturing, murdering, roasting, and eating; literally, my lords, *eating* the mangled victims of his barbarous battles! Such horrible notions shock every precept of religion, divine or natural, and every gene-

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rous feeling of humanity[1]." These remarks are every way proper to be adopted into international law, and apply in like manner against the direct employment in war, in any capacity whatever, of races in any considerable degree inferior in civilization to the people or government to whom they are opposed, especially in cases where they are employed in taking part in invasions. This is a line of conduct which cannot be pursued by any government, least of all by that of a Christian country, without its incurring the utmost moral guilt.

II. As regards maritime warfare[2]. Maritime warfare has hitherto retained much of the harshness which characterised the land warfare of less civilized times, all vessels of the enemy being liable to capture and confiscation, together with at least all the property of an enemy found on board. The remarks made above respecting the manner in which land warfare should be carried on, apply also, so far as applicable, to maritime warfare. The bombardment of towns on the coast and destruction of fishing villages, or undertaking expeditions and enterprises which may lead to these without any other determinate and commensurate object, showing but the animosity and imperfect civilization of the attacking power. It is not necessary here to treat of the various

[1] *Life of the Earl of Chatham*, Vol. II. under date of Nov. 18, 1777.

[2] The foundation of the modern rules of maritime war is to be found in the *Consolato del Mar*, capitols CLXXXVI., VII. and CCXLIII.—LV.

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questions which have been raised respecting the rights of maritime warfare, but the liberty of departure now accorded to hostile vessels on the breaking out of war, is one of those relaxations of the strict rules of war observed in former times, to be attributed to the influence of modern civilization, and on which Christianity has consequently exerted an indirect but important influence. The same cessation of the barbarous practices that once held in regard to captives, which has taken place in land warfare, has likewise taken place here; but the severity of the rules still in force seems in a great measure necessary, especially as regards the detention of merchant seamen who are already qualified for the naval service of their respective states, standing much in the same relation to those in the latter as militiamen do to regular soldiers.

3. As regards the international rights of neutrals[1]. In treating of these there are few points where the direct influence of Christianity can be expected to have operated. These rights in their present form became gradually recognised in western Europe, as greater regularity began to be observed in the international transactions of that part of the world, and are principally deduced from considerations of natural justice. The right of search is the most important belligerent right as regards neutrals, the object of which is to prevent the supplying of articles contraband of war to the enemy of the state enforcing that right, or to prevent the evading a blockade. And this constitutes a species of international maritime juris-

[1] Wheaton, Vol. II. ch. 3. Azuni, Tom. II. pp. 35—49.

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diction peculiar to times of war. A neutral state is bound to take care that in this respect especially its just freedom of action essential to the maintenance of the character it assumes is not interfered with by either of the belligerent powers; neutrals must of course take equal care that they conduct themselves as really such, acting with perfect impartiality, and affording succours to neither party, excepting so far as they may be bound by treaties concluded before the commencement of any particular war. The English rule of the "war of 1756" is generally acquiesced in, which declares that neutrals cannot lawfully avail themselves during a war of any branch of commerce which was not in like manner open to them during the preceding time of peace. Geographical position may occasion any particular country to profit by an extension of commerce with another country, during a war in which either of them may be engaged; but this does not come under the former category, and is not a breach of neutrality.

The extent of the influence of Christianity in regard to these rights, is the basis it afforded for their observance by the spread of the Christian religion, and its consequent influence on civilization; by means of the advancement of which and the extension of international commercial relations they have attained their present form[1].

[1] Vattel, Book III. ch. 7, gives most of the present rules in regard to neutral states and neutrality.

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CHAPTER VII.

The Influence of Christianity upon the International Law of Christendom as regards International Transactions between Christian and Non-Christian States.

The transactions which Christian states have had, in different ages, with nations not professing the Christian religion, have produced effects that have—especially in former times—had considerable influence upon the international law of Christendom. It is therefore necessary that some observations should be made here respecting these transactions; which may be conveniently done by first treating of those between Christian and Mahometan communities, and second of those between the former and other non-Christian nations.

Section I.

The Influence of Christianity upon International Transactions between Christian and Mahometan Nations.

When the Roman empire became Christian, the Church internationally exerted herself to convert the northern nations, and to ameliorate the condition of the Christians in Persia. It has been already shown that the first of these undertakings was eventually attended

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with complete success; but the second was only partially accomplished—though the victories of Heraclius seemed to promise a long rest to the Eastern Churches[1]—when Mahometanism arose. It is beyond the limits of this Essay to trace the progress of Mahometanism, or to enter into any discussion of its doctrines further than is strictly necessary to the subject of this and of a following chapter. For this purpose the Koran must be referred to, in order to ascertain its precise injunctions in regard to international law, and especially in regard to war; for however great respect different sects of Mahometans may pay to other works, this book is that which they alike consider to be their revelation, and is the one which a person of another creed is bound to consult as the repository of their faith. It is also essential to remark, that it is extremely difficult to discover what the doctrine of the Koran on many points really is, for the very convenient doctrines of abrogation and peculiar application render the meaning of contrary passages to be understood in opposite senses by different readers; and the manner in which Abu Bekr arranged the Koran, placing the chapters as a general rule according to length, increased the confusion[2].

The following are the passages which bear upon this subject, Mr Sale's translation being used as one that cannot be accused of unfairness towards Mahometans:—

"Fight therefore for the religion of God, and oblige not

[1] Gibbon, ch. 46.

[2] Sale's *Koran*, Preliminary Discourse, § 3.

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any to what is difficult, except thyself; however, excite the faithful to war, perhaps God will restrain the courage of the unbelievers, for God is stronger than they, and more able to punish. He who intercedeth between men, with a good intercession, shall have a portion thereof; and he who intercedeth with an evil intercession shall have a portion thereof; for God overlooketh all things[1]." "O true believers! take not the Jews or Christians for your friends; they are friends the one to the other: but whoso among you taketh them for his friends, he is surely one of them[2]." "O Prophet! stir up the faithful to war: if twenty of you persevere with constancy, they shall overcome two hundred; and if there be one hundred of you, they shall overcome one thousand of those who believe not, because they are a people which do not understand. Now hath God eased you, for he knew that ye were weak. If there be one hundred of you who persevere with constancy, they shall overcome two hundred; and if there be one thousand of you, they shall overcome two thousand, by the permission of God; for God is with those who persevere. It hath not been granted to any prophet that he should possess captives until he had made a great slaughter of the infidels in the earth[3]." "We have not sent thee, O Mohammed, but as a mercy unto all creatures. Say, No other hath been revealed unto me than that your God is one God: will ye therefore be resigned unto him? But if they turn their

[1] Sale's *Koran*, ch. 4.
[2] Ibid. ch. 8. [3] Ibid. ch. 5.

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backs to the confession of God's unity, say, I proclaim war against you all equally; but I know not whether that which ye are threatened with be nigh, or whether it be far distant[1]." "When ye encounter the unbelievers, strike off their heads, until ye have made a great slaughter among them, and bind them in bonds; and either give them a free dismission afterwards, or exact a ransom, until the war shall have laid down its arms. This shall ye do. Verily, if God pleased, He could take vengeance on them without your assistance; but He commanded you to fight His battles, that He might prove the one of you by the other. And as to those who fight in defence of God's true religion, God will not suffer their works to perish; He will guide them, and will dispose their heart aright; and He will lead them into Paradise, of which He hath told them. O true believers, if ye assist God, by fighting for His religion, He will assist you against your enemies, and will set your feet fast; but as for the infidels, let them perish, and their works shall God render vain. This shall befall them because they have rejected with abhorrence that which God hath revealed; wherefore their works shall be of no avail."..."The true believers say, Hath not a sura (chapter) been revealed, commanding war against the infidels? but when a sura without any ambiguity is revealed, and war is mentioned therein, thou mayest see those in whose hearts is an infirmity look towards thee with the eye of one whom

[1] Ibid. ch. 21.

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death overshadoweth[1]." Such are the precepts of Mahometanism in regard to war. While we consider it necessary, in passing, to differ from those nominal Christians who admire Mahometans and their religion, we also consider it a great error to represent Islamism as wholly made up of evil principles; such a creed would be productive of but transient mischief, and could not last a generation. Mahometanism is, however, much worse; inasmuch as it, more than any other false system of belief, unites in an eminent degree sufficient religion to satisfy an unawakened and unenlightened conscience, while sanctioning almost every gratification the passions can desire. Its triumph broke down the barrier against permanent barbarian conquest which the firm rule of the Roman empire had up to that time maintained in the East, and let in upon the eastern provinces tribes similar in manners to those which for centuries continued to inundate the West[2]. Mahometanism, further, by its positive precepts preserved everywhere in their utmost harshness and strictness the old distinction between the vanquished and their conquerors, and can afford therefore no real means for the amelioration of the condition of slavery to which the former are reduced; for where a

[1] Sale's *Koran*, ch. 47. In a note Mr Sale states that the Hanisites consider the first paragraph of the quotation from this chapter to be no longer in force.

[2] There is but little difference in Gibbon's description of the manners of the Tartar and Turkish tribes which invaded the Asiastic provinces and those of the Huns, Avars, and Lombards.

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nation's system of polity is interwoven with its religion, as in the case of Mahometan nations, they must stand or fall together, as an alteration of the former must lead to the dissolution of the nation[1]. A religion also, like that of Mahomet, which positively enjoins the use of the sword as the means of its propagation, and which thereby affords its votaries what they, in accordance with their faith, must always really consider a constant and ever-ready supreme occasion for a lawful war, must necessarily—at least so long as such maxims are acted upon—be regarded as the common enemy of mankind. The unfortunate position of the eastern world at the rise of Mahometanism favoured its great and rapid extension rather than those wide-spread corruptions in the Christian Church respecting which succeeding writers have re-echoed statements based on vague generalities and doubtful authorities. Though in its first years probably it did not attack Christianity with any particular or extraordinary virulence, yet the states of Christendom soon became the only foes worthy of the name which remained to oppose the triumphant progress of Islamism; and, in the course of time, from the heart of France to the Caucasus the conflict between the two religions was carried on with the utmost violence; Mahometanism being invariably the assailant, and Christianity in some places even losing ground or defending itself with diffi-

[1] White's *Bampton Lecture.*

[2] Bacon's *Essays*, 29, "Of the True Greatness of Kingdoms and Estates."

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culty. Prudential and financial considerations at length induced the caliphs to relieve their Christian subjects from actual persecution, and to grant certain facilities and privileges to Christians visiting the Holy Land; but the conquest of Syria by the Turks brought forward a different policy, and the persecutions to which the pilgrims as well as the eastern Christians were subject, led to the Crusades[1]. These wars formed the great crisis of the conflict between Christianity and Mahometanism, and though originating in motives of piety, they were worthy of the most consummate policy; inasmuch as they hindered the progress of the latter, and delayed the fall of the eastern empire, and by this means were probably the real cause of the check finally given to Mahometanism[2].

[1] "Depuis la fin du 7eme siècle, le christianisme luttait contre le mahométisme; il l'avait vaincu en Europe après en avoir été dangereusement menacé; il etait parvenu à le confiner en Espagne. Là encore, il travaillait constamment à l'expulser. On a présenté les croisades comme une espèce d'accident, comme un évenement imprévu, inouï, né des recits qué faisaient les pélerins au retour de Jérusalem, et des prédications de Pierre l'Ermite. Il n'en est rien. Les croisades, Messieurs, ont été la continuation, la zénith de la grande lutte engagée depuis 4 siècles entre le christianisme et le mahometisme.....Les croisades en ont été la principale crise. C'est là leur caractère historique, le lien qui les attache à l'ensemble des faits." Guizot, 8th Lecture. Though much of these observations is very true, yet Peter the Hermit's preaching was certainly the *proximate* cause of the crusades.

[2] "The world has been so long accustomed to hear the crusades considered as the height of frenzy and injustice, that

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Many actions of the crusaders were undoubtedly disgraceful to their religion as well as to the sacred character they assumed[1], but still the crusades were no aggression, persecution of Christians, as such, being always considered a *casus belli* by Christian powers[2], and we must remember that distributive justice requires that, "like each individual, each nation should be judged of according to its conduct to other nations, compared with the reciprocal conduct of these other states[3]." After Constantinople had fallen into the hands of the Moslems, and when they had been driven from western Europe, the plains of Hungary became the battlefield of the two

to undertake their defence might be perhaps a hazardous task. We must, however, recollect, that had it not been for these extraordinary exertions of generous courage, the whole of Europe would perhaps have fallen, and Christianity been buried in the ruins. It was not as Voltaire has falsely or weakly asserted, a conspiracy of robbers, it was not an unprovoked attack on a distant and inoffensive nation: it was a blow aimed at the heart of a most powerful and active enemy. Had not the Christian kingdoms of Asia been established as a check to the Mahometans, Italy, and the scanty remnant of Christianity in Spain, must again have fallen into their power; and France herself have needed all the heroism and good fortune of a Charles Martel to deliver her from subjugation." Note 41 to Heber's *Palestine*.

[1] Ward, Vol. I. pp. 138, 9. "At the same time it must be remarked that historians generally omit to state such circumstances as Tancred's efforts to stop the massacre on the storming of Jerusalem, and his sorrow for his imperfect success." Orderici Vitalis *Ecc. Hist.* Lib. IX. ad fin.

[2] Grotius, Lib. II. ch. 20, § 49.

[3] Reddie, *Maritime International Law*, p. ix.

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religions; twice[1] even Vienna nearly yielded to the advancing forces of the Ottomans, and on the last occasion, when to all human probability that city, then the bulwark of Christendom towards the East, was lost, all Christian Europe acknowledged the appropriateness of the text chosen by the preacher on returning thanks to heaven for their unexpected deliverance, "There came a man from God whose name was John[2]."

During these wars in eastern Europe, thousands of Christians were swept away to hopeless slavery on every inroad of the Moslems, and the coasts of every Christian country bordering on the Mediterranean, as well as the peaceful merchant vessel pursuing its course on that sea, were for centuries exposed to their ravages and attacks[3]. These injuries necessarily caused to be directed against them, and especially against the Barbary states, those efforts which every government is bound to make for the defence of its subjects, and caused the French alliances with Turkey[4] to be regarded with astonishment and abhorrence. It was on this account

[1] In 1529 and 1683.

[2] Coyer, *Histoire de Jean Sobieski*, Tom. II. p. 334.

[3] The Mahometans "used to descend upon the shores of the Mediterranean for the purpose of procuring slaves; and scarcely at present can any one form an adequate estimate of the horrors and desolation which they produced in Sicily, in Campania, Calabria, and generally along the coasts of Italy and Spain." Digby's *Mores Catholici*, Vol. VII. p. 138, where reference is made to many original authorities.

[4] Especially those of Francis the first and Louis the fourteenth.

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also that the earlier publicists laid down the rule that Christian powers could, without incurring moral guilt, only in cases of the utmost emergency, employ those who were not Christians, even in their strict defence[1], to the enforcing of which decision public opinion then annexed no inconsiderable sanction.

Grotius assents to this doctrine when he adopts the language of the rebuke given by the archbishop of Rheims to his sovereign, "Nihil enim distat utrum quis se paganis societ, an abnegato Deo idola colat;" and condemns any course whatever being adopted which may increase the power of the infidel, the lessening of which, he says, all Christian states are bound to pursue, by furnishing either men or money[2]; and in England the legal text writer of greatest authority expressly declares it to be contrary to common law to conclude a treaty *mutui auxilii* with a non-Christian power[3]. The influence of Christianity, properly speaking, though perhaps perverted in Spain[4], has not led Christian nations to the persecution of

[1] Arias, *de Bello et ejus Justitia*, § 192, and M. Landensis, *Tractatus de Bello*, Questio 3, both in the 16th vol. of *Tractatus Tractatuum*.

[2] Lib. II. ch. 15, §§ 11, 12, this last remark related more immediately to a different state of things than that which has existed in Europe for the last 150 years.

[3] Coke's 4th Institute, p. 155.

[4] It would be interesting to trace, in the earlier records of the Spanish proceedings against the Morescoes, how far their severity was the consequence, and not the cause, of the constant seditions of the latter, and of the information they furnished the Barbary pirates.

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Mahometans, as such, but simply to reduce them to a state which disables them from harassing Christendom, and their treatment at the hands of Christian states, considering the provocation and injury these latter have received, has been characterised by a considerable degree of forbearance and moderation. The following extract from the Assises of Jerusalem, in regard to those who should assist the enemy (the Saracens), is exactly the same as any similar ordinance of the present day would be: "Ce il avient que un marenier ou un marchant, quy que il soit, porte avoir devee en tere des Sarazins, si com est se il porte armeures, haubers, chauses de fer, lanses et balestres, heaumes ou verges d'osier ou de fer, et il en pevent estre atent en la court de la mer par les mareniers ou par les marchans qui la estoient, que seuiront que il vendi et porta as Sarazins selui avoir devee, et ce que il porta monta plus de un marc d'argent, tout quan qui il avoit doit estre don seignor de la tere, et doit estre ingie par la court des boujois a pendre par la goule, puis que les iurez de la mer averont resen devant eaus les guarens de ceste choze; et ce est droit et raison par l'assize[1]." Of a similar nature is the following decree of the third council of the Lateran. "Ita quorumdam animos occupavit sæva cupiditas, ut cum glorientur nomine Christiano, Saracenis arma, ferrum, et lignamina galearum deferant, et pares eis, aut etiam superiores in malitia fiant, dum ad impugnandos Christianos, arma eis et necessaria subministrant. Sunt etiam, qui pro sua cupiditate in galeis et piraticis

[1] Ch. XLIV.

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Saracenorum navibus regimen et curam gubernationis exercent. Tales igitur a communione ecclesiæ præcisos, et excommunicationi pro sua iniquitate subjectos, et rerum suarum, per sæculi principes catholicos et consules civitatum, privatione mulctari, et capientium servos, si capti fuerint, fore censemus. Præcipimus etiam ut per ecclesias maritimarum urbium crebra et solemnis excommunicatio proferatur in eos[1]." Nor is this extract from the Consulato, providing, that when vessels were sold in territories of the Saracens, Christian sailors should be afforded the means to convey themselves to a Christian land, dictated by any feelings of bigotry or evincive of any ill will towards Mahometans. "Si nau ò leny se vendiá en terra de Sarrains, lo senyor del leny deu donar leny é vianda als mariners entro que sien en terra de Crestians on pugnen haver recobre[2]." National manners change but slowly, and ages are required to eradicate long-established customs and inveterate habits. The cruelties in Servia, in 1815, the awful massacre at Scio, and the atrocities committed on the Christians in almost every city of the Turkish empire at the time of the Greek revolution, prove that the old Turkish mode of treating Christians is not forgotten, and time alone can show the sincerity of any other line of conduct which may be pursued towards them.

The Crusades afforded further examples of the right of waging war to prevent persecution of Christians, and

[1] Ch. XXIV: in Sacrosancta concilia sub ann. 1179.

[2] Capitol CVII.

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eventually produced a more catholic spirit in Christendom. In after times such powers as obtained any extraordinary concessions, extended them to Christians irrespective of nationality or difference of creed. But these powers by no means either sought or seek to injure Mahometans, as such, and can of course, conclude treaties with them, whenever by so doing they do not injure the cause of Christianity, and have the means of benefiting the Mahometans themselves; or, above all, their own Christian brethren of the eastern Churches, it being their duty to take advantage of every opportunity of doing good to all, "especially to those of the household of faith."

SECTION II.

The Influence of Christianity upon International Transactions between Christian and non-Christian States other than Mahometan.

The first instances of which it will be necessary to make mention here, will be the Saxon wars of Charlemagne, and the wars of the Teutonic knights. As regards the former, it is essential to remark, that they were not fresh wars then first commenced, but the conclusion of a long contest between two races of invading nations. Hostilities had been going on between the Franks and Saxons for many years previous[1], and it would be alike difficult and unprofitable to determine

[1] Ozanam, *Civilisation Chrétienne des Francs*, p. 227.

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which people were the first aggressors. The proximate causes of Charlemagne's campaigns were an insult offered to a Christian missionary, and the persecution of native Christians[1], which, considering the peculiar nature of the age, rendered it probably a necessity, as well as a duty, for him to take vigorous measures to anticipate and counteract the attacks of paganism.

The wars of the Teutonic knights in Ermeland, Prussia, Samogitia, Courland, Liefland, and Esthonia, those of the Poles in Prussia and Lithuania, and of the Swedes in the modern duchy of Finland, arose in a similar manner. The accounts given by Adam of Bremen of the inhabitants of Courland and Estland[2], that of the Carelians and Finns in Geijer's history of the Swedes[3], and that of the Livonians and Lithuanians in Digby's Mores Catholici[4], show, what can readily be conceded, that their manners were similar to those of the worst classes of the invading nations; that they were always ready to attack their neighbours, and persecute such of their own countrymen as became Christians; and that the establishment of the Teutonic and Sword-bearing Orders was a step necessary for the defence of

[1] Ibid. pp. 241—254. Sismondi, *Histoire des Français*, Tom. II. pp. 234, 235. Schmidt, *Histoire des Allemands*, Tom. II. chs. 1, 2.

[2] In his short treatise, *De Situ Danicæ*, which contains descriptions of the different tribes bordering on the Baltic, whose manners were very similar.

[3] Chapter 3.

[4] Vol. VII. pp. 255—260.

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the north-eastern outposts of Christendom. Whatever cruelties and oppressions these Orders may have committed, are certainly unjustifiable; but in the course of the wars in which they were engaged, they had an undoubted right to plan and make conquests, and govern the countries they conquered.

The conquest of many countries held by pagans, and the assent of the popes having been generally in the first instance sought, on account of the assistance their sanction afforded, gave rise to the notions that Christians had a right to pagan countries, and that the popes could bestow them on whom they pleased. But these very erroneous views found opponents among the ablest writers of the middle ages; Bonnor declared that war could not be lawfully made against Saracens as such[1]; and Paul Voladimir, rector of the university of Cracow, denied, before the council of Constance, "that Christians were permitted to convert infidels by force of arms, and that the lands of the infidels lawfully belonged to Christians[2];" and later, Victoria and many others made similar declarations. Victoria's opinion is entitled to the more consideration, inasmuch as he attributed great influence to the papacy, for while holding "Papa nullam potestatem temporalem habet in barbaros Indos, neque in alios infideles[3]," and again, "Principes Christiani, non possunt etiam authoritate papæ, coercere barbaros a peccatis contra

[1] *L'Arbre des Batailles*, ch. 35.

[2] Krasinski, *Religious History of the Slavonic Nations*, p. 124.

[3] Relectio v. *De Indes*, Sec. 2, § 6.

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legem naturæ nec ratione illorum eos punire[1]," he also states, "Papa potuit negotium conversionis Indorum barbarorum solis Hispanis demandare, et omnibus aliis non solum prædicationem, sed etiam commercium interdicere: Si ita expediret ad Christianæ religionis propagationem[2]."

But the contrary opinions were too favourable to papal pretensions not to be strenuously asserted by the popes, and it is here that their claim to dispose of the sovereignty of kingdoms appeared in its most extravagant form. Not content with the authority they had obtained over most Christian nations, they asserted an exclusive power of bestowing heathen countries on the Christian state, whose subjects first attacked or discovered them[3]: and those nations which disregarded this pretended right of making these grants, nevertheless adopted the principle on which they were founded[4], viz. that the rights of property of the old inhabitants yielded to the claims of discovery of the first Christian power whose subjects arrived on their coasts, and that these claims barred those of all subsequent comers. It thus became a question of mere force, on which the fate of newly discovered countries rested. Those in which firm governments were established were treated with some degree of consideration, but others were at once seized. Spain[5] and Portugal

[1] Ibid. § 16.

[2] Ibid. Sec. 3, § 10.

[3] Especially in the grants to Spain and Portugal.

[4] Conf. patents of Henry the Seventh and Elizabeth. Ward, Vol. II. pp. 114, 115.

[5] See Raynal's *Account of the Proceeding of European Nations in the East and West Indies.*

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share the infamy of setting the example of this utter disregard of the rights of the original inhabitants; but it must be also stated that the other European nations, whenever opportunities offered, unhappily showed an equal disposition to follow in their footsteps. On the great maritime discoveries which distinguished the last ten years of the 15th century, in the east the smaller islands were almost immediately subdued by the Portuguese, and Africa owed its escape from the same fate to its extent and its best ally its climate. The desolation of America and of the West India islands by the Spaniards, in a comparatively enlightened age, is one of the most awful events recorded in history. The pretence for most of these brigandages, on the largest scale, was to compel the unhappy inhabitants to relinquish certain practices to which they were supposed to be addicted, to profess Christianity, and to become subject to the authority of the See of Rome, and of the power to whom it had given their country. In case of refusal they were to be treated as enemies. But the contemporary writers on international law justly condemned such proceedings, and clearly showed, that though Christianity might be often their pretence, it really had nothing to do with them; and further, that those general maxims of equity and justice, which are the basis of every system of international law, are to be observed by nations to each other irrespective of the religions they profess[1].

[1] Victoria's opinion has been already quoted. Mackintosh, *Progress of Ethical Philosophy*, § 3.

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The territories which the several European nations seized in different parts of the world as above described, have now generally been acknowledged as theirs in different kinds of international compacts. But to this day Christian powers, where they are not restrained by the fear of exciting the jealousy and opposition of other nations, seem still to consider themselves justified in disregarding the rights of the original inhabitants of any places they may choose to seize[1]. It would be out of place here to discuss at length what constitues a right for any nation to occupy thinly populated districts, further than to observe that for Christian nations entirely to overlook the rights of others, as in this respect, especially, they have but too often done, is utterly at variance with the gospel precepts in regard to the respect with which they should be treated.

[1] The most recent examples are those furnished by the conduct of the French in Tahiti, the Marquesas, and New Caledonia; and that of the Russians in Manchuria.

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CHAPTER VIII.

The Influence of Christianity as regards International Regulations relative to the African Slave-trade.

The state of slavery in western Europe during the middle ages, so far as it pertains to this subject, has already been treated of, as well as the causes which led to its decline and cessation, the principal of which, as was then stated, was the influence of Christianity, whether exerted directly or indirectly. But, at the time when slavery had very nearly disappeared in western Europe, and when in those countries where it still partially remained, it was assuming the milder form of serfdom or villeinage, a new species arose. For on the settlement of the new world, the Spanish colonists in America, having by their oppressions exterminated in many places the native inhabitants, and being themselves unable or unwilling to perform agricultural or mining labours, adopted the expedient of importing slaves from Africa, and thus the African slave-trade, of which traces are found in the earliest times, received a fresh impulse, and took a new direction. The observations to be made here respecting it will be confined to showing the influence of Christianity upon the portion of international law to which it belongs.

At the time that the West India branch of the African slave-trade arose, clear ideas respecting the real rights of war and the treatment of prisoners were not

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generally entertained; and though Soto, the arbiter in the case of the Indians, argued between Sepulveda and the good Las Casas, was the first who condemned the African slave-trade, it would appear that his condemnation was rather of the means by which it was carried on than of the traffic itself, inasmuch as he seems to have recognised the rules of warfare then observed[1], and Las Casas, in order to put an end to the sufferings of the Indians, assented to the plan of providing negro slaves in their place, which had been put into practice on a small scale so early as the year 1505[2]. This form of slavery thus commenced was, for many years, of very limited extent. The development of the resources of the new world led to its gradual increase, until a participation in its unhallowed profits was sought with eagerness by most European nations. But Christianity which had centuries before combatted and overthrown the slave institutions of the nations which ruled in western Europe in the middle ages, in like manner combatted, and is still employed in overthrowing, the same institutions which have appeared in a worse form in the various countries of the new world: and there is every reason to expect that, in course of time, the remaining Christian slave-holding states will seek to do away with institutions which are practical contradictions to the sincerity of their belief in the religion they profess. Yet an international jurist who

[1] Wheaton's *History of the Law of Nations*, p. 34.

[2] Quintana, *Vida de Fr. Bartolomé de las Casas*, more particularly Appendix 7.

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considers that the present condition of the different classes of society in modern Europe is owing in a great measure to the gradual cessation of slavery, and who further considers the ill effects of sudden manumissions for which no classes of communities are prepared, cannot but come to the conclusion that as national manners change but slowly, the gradual relaxation and abolition of slavery by measures adapted respectively to each different country, and drawn up with due regard to the circumstances of the state, is the course he is bound to urge both internationally and also in the case of each particular country. Especially when remembering that nothing produces more pernicious effects than an ill-regulated benevolence, and that slavery, more than any other evil result of a vicious system of polity, requires from its very nature the aid of time to remove the consequences to which it of necessity leads.

Towards the end of the last century many persons, in this country especially, being convinced of the insufficiency of the grounds upon which Negro slavery was defended, began to exert their influence to procure its abolition, and their efforts have been attended with success[1]. It is extremely gratifying to consider that it was the subject of a prize Essay, given out by the Rev. Peter Peckard, Master of Magdalene, one of those who from Christian principles were decidedly opposed to this traffic, when

[1] Observations and notices respecting the early abolitionists may be found in Clarkson's *Strictures on the Life of Wilberforce by his sons.*

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Vice-Chancellor of this University in the year 1784, that first induced Clarkson[1] to turn his attention to this subject, and led him to those zealous exertions for its suppression which brought the iniquities of the traffic so prominently into notice.

Great Britain, it may be stated with a just feeling of pride, first made this question one of international importance, and at Paris in 1814, and at the congresses of Vienna and Verona in 1815 and 1822, obtained declarations condemnatory of this traffic from the principal European powers there represented. She has since entered into various treaties for its suppression with almost all the nations of the earth, by which all rights necessary for this object are mutually conceded, and especially the right of search.

The African slave-trade has thus become internationally condemned[2]: many nations have also declared it to be piracy, and with more or less sincerity sought opportunities of recording their detestation of it. These efforts now seem in a fair way of being attended with general success by means of the adoption of Christian principles of action, operating through the agency of the more enlightened ideas of humanity now entertained, and of the progressive advancement of civilization.

[1] The Members' prize for 1784. Clarkson was the first prizeman among the middle Bachelors.

[2] Mention is made of several early American anti-slavery writers, and the whole subject is treated at length in Wheaton's *History of the Law of Nations*, pp. 585—698. It is impossible however to concur in all his opinions and conclusions.

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CHAPTER IX.

The Influence of Christianity upon the International Law of Eastern Christendom.

THE Christian countries of the East, in respect of their international relations, form two distinct sets of communities. The first comprises those which formed part of the Roman empire, and those European nations which owed their conversion to the eastern empire, and have now become part of the great Christian commonwealth of states. The second comprises the Christian provinces of Abyssinia which have never formed any such intimate connexion with the nations of Europe. In accordance with this division the observations to be here made, relative to the international law of eastern Christendom, will be treated of separately, in the manner thus indicated.

SECTION I.

The Influence of Christianity upon the International Law of the Eastern Empire.

The influence of Christianity in the eastern empire, considering the great variety of untoward circumstances which afflicted those countries, was very great, and yet it is extremely difficult to be traced step by step[1]. In the

[1] Many interesting observations respecting the eastern empire are contained in M. Biot's *Abolition de l'esclavage en*

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corruption of manners which everywhere prevailed, consequent on the wars which overthrew the Roman rule in the West, the barbarous custom of pillaging shipwrecked persons even crept into the eastern empire[1], but was rigorously condemned in the Basilicon[2], Basilicon Minor[3], the so-called maritime laws of Rhodes[4], as well as in some other compilations of laws. The legislation on this point appears to be all that can be attributed to the influence of Christianity in the maritime codes in force in the eastern empire, but in respect of the international rights of war, as there observed, the influence of Christianity is very apparent. An early example of this is afforded in the conduct of Heraclius in his Persian war, especially in the language of his address to the Roman army on descending into the plains of Media, as well as in his repeated offers of peace to Chosroes, when, after the fall of Dastargard, he pursued through the heart of Persia, through realms where the legions of Rome had never before penetrated, the then vanquished monarch, who as a conqueror had for a quarter of a century harassed the eastern empire[5].

In the wars of that empire with the different races of barbarians, as these latter reduced to slavery the captives whose lives they spared, the former in retaliation followed

Occident, a treatise which obtained the medal of the French Academy of Sciences.

[1] Pardessus, *Lois Maritimes*, Vol. I. p. 143.
[2] Ibid. p. 189. [3] Ibid. p. 199. [4] Ibid. p. 257.
[5] Gibbon, ch. 46.

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their example[1], provided always that these prisoners were not Christians; for, mindful of the teaching of the Gospel, they did not reduce to slavery their captive Christian brethren, whatever form of Christianity they might profess. Great indeed is the contrast between the conduct of that Government in regard to this portion of the international rights of war as observed in the middle ages, and that of the different nations of western Christendom, as well in respect to their wars between themselves as to those between them and the eastern empire[2]: and Grotius also bears witness to a feeling and disposition of the same nature, viz. that desire to avoid destruction of human life which renders the history of the empire so remarkable. "Certe apud Græcos Christianissimum professos diu observatus est canon quo sacris ad tempus arcebantur qui hostem in qualicumque bello interfecissent[3]."

[1] "Une certaine dureté dans les mœurs devait être entretenue par les invasions des peuples barbares, accompagnées de tous les exces de la force brutale. Comme ils emmenaient en esclavage, les Grecs prisonniers, il était naturel que, par une sorte de talion, les barbares, prisonniers des Grecs, fussent aussi rendus esclaves." Biot, *De l'abolition de l'esclavage ancien en Occident*, p. 229.

[2] Ibid. pp. 233—237.

[3] Grotius, Lib. II. ch. 24, ad fin. It is somewhat strange that in the work of Constantine Porphyrogenitus *de Administrando Imperio*, the only use made of Christianity in regard to international transactions is, to render it the supposed authority for certain tales to be told neighbouring nations as to the reasons why royal alliances should not be formed with them, or Greek fire and regal ornaments given to them.

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Supplementary to the remarks which have already been made in this Essay respecting slavery, it may be here stated, that besides the limitations of slavery in the Eastern empire—by reason of circumstances above mentioned, and the legislative enactments of the emperors to facilitate manumissions, and by this means to lead to the general and gradual abolition of slavery—there were not wanting persons who on Christian grounds condemned all slavery whatever[1], and ably and successfully followed out the teaching of St Chrysostom [2].

It is unnecessary here to treat at length of the causes which led to the fall of the Eastern empire, any more than was before done in the case of the Western. Some of these sprang from internal dissensions, but the greater part were derived from the effects of the continuous attacks of races far inferior in civilization to the people they conquered, aggravated and aided by the treacherous assistance or open hostility of the papacy and its adherents[3]. The feigned disapproval which the legates alleged as their

[1] "Siméon le jeune, qu'on présume contemporain de Manuel Comnène, nous dit, dans son 10e Discours, que la servitude n'a jamais été établie par le Créateur, qu'elle est née de la perversité mutuelle de ceux qui étaient du même sang." Biot, p. 237.

[2] "Now should any one ask whence is slavery, and why it has found entrance into human life, (and many I know are both glad to ask such questions, and desirous to be informed of them,) I will tell you, slavery is the fruit of covetousness, of extravagance, of insatiable greediness." *Homily XXII. on Epistle to Ephesians*, (ch. vi. 8, 9.)

[3] See more especially the extraordinary conduct of the Western powers and the Genoese auxiliaries, in Gibbon, ch. 68.

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motive in leaving the fourth crusade, when to gratify private resentment it was turned against a Christian empire[1], was too much assumed to be long observed; and the conduct ever since pursued towards the Greeks by most of the nations of Christendom cannot be too severely or unequivocally condemned.

Those European countries which owe their conversion to Christianity—and consequently their civilization—to the Eastern empire, with the exception of those now comprised in the Russian dominions, have long since ceased to exist as independent states. It is therefore of Russia alone as their representative that we have now to speak. It was England that first as it were introduced Russia to the West, in the middle of the sixteenth century; but it was not until the commencement of the last century, and especially after the Treaty of Nystadt in 1721, that she formed any intimate relation with western Europe. The long wars she was engaged in with Tartar tribes, and the ravages which necessarily accompany the Tartar mode of warfare, greatly retarded her progress in civilization; added to which it is very important to observe, that she never came under the power of those circumstances to the influence of which the present state of society and civilization, so far as regards international law, in western and central Europe, is mainly to be ascribed; and slavery still exists there under the form of serfdom. These are the principal causes that have hitherto

[1] Sismondi's *Italian Republics*, Vol. II. p. 372.

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prevented Russia from being on the same footing as the other states of Europe, and they have produced their necessary effects upon her international transactions.

Similarity of religion has naturally often caused her to interfere on behalf of the Christians in Turkey; but these interferences have too often partaken more of political than of religious grounds of action.

The well-known story of the fall of Poland shows, by the eagerness with which Russia acquiesced in and followed up the scheme for the partition of that unhappy country, emanating from the courts of Berlin and Vienna[1], that the actions of her government were then guided by no considerations of natural justice. The manner in which her wars have always been conducted, the reckless disregard for human life and human suffering which has characterised them, evince both the effects of an imperfect civilization, and the little influence which Christian principles have hitherto exerted over her national policy.

It is very pleasing, on the other hand, to observe the efforts Russia has made, at great sacrifice of life and at vast expense, to suppress the slave-trade carried on by the barbarous tribes of Circassia. She has there with great singleness of purpose strenuously endeavoured to put an end to a species of slavery resulting from the teaching of the Koran, which has sprung up in those regions in a form the most debasing and demoralising that even slavery has ever assumed.

[1] Mackintosh, *Account of the Partition of Poland.*

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Russia has long since come under the international law which regulates the transactions of the rest of Christendom. The above observations are intended to show that the unhappy events of her early history have left traces which—principally from the absence of those counteracting circumstances that urged forward the civilization of the West—are not yet obliterated, and are more or less observable in all her international transactions.

Section II.

The Influence of Christianity upon the International Law of Abyssinia.

Christianity was introduced into Abyssinia in a corrupted form[1], and has been mixed up with many Jewish superstitions[2], which have been perpetuated in a great measure by the rise of Islamism, about eighty years after the conversion of that country, having cut off from it all permanent or secure communication with the rest of Christendom. When this intercourse was renewed it proved of evil effect; for the Portuguese, on their arrival on the coast of the Red Sea, by introducing Jesuits, and endeavouring to convert the people to the Romish faith, caused dissensions prejudicial to Christianity[3];

[1] The Monophysite errors were introduced by the first missions, and kept up by ecclesiastical dependence on the Coptic Church.

[2] Bishop Russell's *Nubia and Abyssinia*, p. 265.

[3] For a brief account of these transactions see *Nubia and Abyssinia*, chs. 3, 5 and 6, and Gibbon, ch. 47, § 6.

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which, together with the long-continued predatory inroads of various barbarous tribes, caused the rapid decline of Abyssinia. Christianity has thus never had an opportunity of producing its real effects, or exerting its proper influence in that country; and accordingly frequent instances of its influence, especially internationally, cannot reasonably be expected. One remarkable instance however may be cited which exhibits a spirit of toleration well worthy of a Christian state. It was to the tolerant Christian land of Abyssinia that a great part of Mahomet's disciples withdrew on the commencement of the persecution against them at Mecca[1].

There are other circumstances which will further explain the little influence Christianity has been able to exert there. The church indeed did not wholly neglect to teach true Christian doctrines. The ninth section of the Ethiopic version of the Apostolic Constitutions declares that Christians ought to forgive the trespasses of their neighbours, and not let revenge dwell in their hearts nor think evil; and bishops are enjoined to enforce this: and in the tenth section it is expressly declared to be their special duty to be peacemakers[2]. But the very peculiar policy pursued in regard to the election of the abuna or patriarch, impaired alike the authority and usefulness of the Church[3]. The abuna is by a canon directed to be chosen by the patriarch of

[1] Sale's *Koran*, Preliminary Discourse, § 2.
[2] Platt's *Didascalia*.
[3] Jowett's *Christian Researches*, pp. 174, 5.

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Alexandria, and not to be a native of Abyssinia. By not being permitted to consecrate suffragans he becomes the only bishop of the country, and being quite a stranger to the people, their language and institutions, he has ever been incapable of exerting his power in any effective beneficial manner[1]. Legrand shows how this further prejudicially affects the usefulness of the clergy, on account of the abuna's inability to judge of the fitness of those whom he ordains: "Il est même très difficile qu'il puisse juger de la capacité de ceux qu'il ordonne: la langue dans laquelle on célébre l'office et on administre les sacremens est l'ancienne langue du païs, qu'on n'entend plus, à moins qu'on ne l'apprenne comme nous apprenons les langues étrangères; et l'abuna ne sçait ordinairement non plus la langue sçavante que la vulgaire[2]." And thus "from the want of an independent power to give force to humanizing tendencies, the religion which has struck its roots deep into the heart of this singular people assumes rather a passive than an active character[3]."

The sincerity of the attachment of the Abyssinians to Christianity, by which means they stand an oasis amidst the heathen, has indeed been rewarded by the continued independent existence of their native country through more calamities than perhaps ever afflicted any other land; and while Christianity remains there is hope for a revived

[1] Legrand, 9th dissertation, at the end of his edition of Lobo's *Relation Historique*.

[2] Ibid. p. 287.

[3] *Eastern Churches*, p. 108.

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national Church, as well as for a return of all the blessings to which it would again give rise.

Under other conditions, the Christianity of this land would probably acquire a more active influence, and effectively co-operate as well in the evangelization of eastern Africa, as in the extension in that part of the continent of the international usages of the rest of Christendom.

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CHAPTER X.

The Influence of Christianity upon International Duties.

These, like some of the international rights above mentioned, belong in part to polity as well as to international law. For the sake of completeness, however, they will, so far as they relate to the latter, be briefly stated here.

States, in their capacity of moral agents as well as individuals, have their several duties. It is of their higher or moral duties[1] that mention will now be made, the primary of which are those of humanity, justice, truth, purity, and order; and the duties of moral and intellectual progress, including of course in these that of religious belief. These are in a great measure international duties; they are prescribed by morality, and are enforced with fresh and increased authority by the Christian revelation. And inasmuch as Christians are under stricter moral obligations than those imposed by natural religion, of which their religion is a "republication and external institution[2]," the conduct of states professing to guide their actions by Christian principles must of necessity be stricter than that of nations who from ignorance, or a perverse attachment to an infidel faith, have not yet acknowledged the truth of the Christian creed.

[1] Whewell's *Elements of Morality*, Polity, ch. 3.

[2] Butler's *Analogy*, Part 2, ch. 1.

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The duties of Christians are of course to be deduced from the volume which contains their faith: the precepts laid down in it inculcate the most universal and enlarged benevolence[1], a strict regard for the rights of others[2], as well as a due performance of our own engagements[3]. In the New Testament there are also injunctions to civil obedience by which, internationally, governments are strengthened, and thus enabled to act with greater promptitude and effect[4]; and its encouragements to industry[5] tend to dispel that restlessness to which so many national calamities owe their origin.

Bacon strikingly points out the teaching of Christianity in regard to the general duty of humanity: "We do not read that ever He (our Saviour) vouchsafed to do any miracle about honour or money, save that one for giving tribute to Cæsar: but only about the preserving, sustaining, or healing the body of man[6]."

The numerous hospitals that exist in Christian countries, the first establishment of which is to be traced to the influence of the precepts of Christianity[7], show the favourable result that has attended its teaching on this point, as the benefits to be derived from these institutions

[1] 1 Cor. xiii.; 1 Tim. i. 5; 1 Pet. iv. 8.

[2] St Matth. vii. 12.

[3] More especially as shown by St Paul's directions in his epistles to all orders and classes of Christians to do their respective duties.

[4] Rom. xiii. 1—7. [5] Ephes. iv. 28.

[6] *Advancement of Learning*, Book II. Medicine.

[7] Digby's *Mores Catholici*, Vol. VII. p. 408.

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have been extended indifferently to the natives of every part of the globe, and to the professors of every creed.

It is also owing to the influence exerted by the Christian religion on the manners of the nations of Christendom that those international duties owe their origin, to the observance of which, as now customary, no state is positively bound e. g. the extreme kindness and attention which all Christian nations show to the shipwrecked. Yet these have now so become part at least of international duties, that a departure from them would be justly considered reasonable ground for complaint.

Two instances may be cited in illustration of the foregoing remarks, taken, on account of general acquaintance with the circumstances connected with them, from the history of our own land. When the tidings of the earthquake at Lisbon, in 1755, reached this country, parliament unanimously voted £100,000 in aid of the distressed Portuguese, and sent a large portion of the amount in the shape of provisions, though considerable scarcity was prevalent at the time in the British Islands[1]: and the generous manner in which relief was raised in foreign countries on behalf of the Irish, during the late famine, is fresh in the recollection of all.

[1] Smollett's *History of England*, Book III. chs. 4, 36.

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PART II.

THE INFLUENCE OF CHRISTIANITY UPON THE INTERNATIONAL LAW OF NON-CHRISTIAN NATIONS.

Preliminary Observations.

In considering this part of our subject we shall treat only of those non-Christian nations that have come in contact with Christian states, among whom alone the influence of Christianity can be expected to have operated, and among them only in an indirect manner by means of the changes wrought in their international usages by intercommunication with the latter: and we shall consider, first, the influence of Christianity upon the international law of Mahometan, and then, its influence upon that of other non-Christian nations.

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CHAPTER I.

The Influence of Christianity upon the International Law of Mahometan Nations.

THE long-continued hostilities which existed between Christian and Mahometan nations, consequent upon the religious precepts of the latter, which inculcate war against those not of their own creed, and command that they should take neither a Christian nor a Jew for a friend, necessarily prevented the Christian religion, for several centuries, from exerting any important influence upon Mahometan international law. In the course of these wars, however, it was impossible but that the Christian religion should beneficially affect the Mahometans in an indirect manner; and we find accordingly that chivalry produced some corresponding effects among them. Nureddin, for example, in a spirit worthy of Christian chivalry, refused to take advantage of the death of Baldwin the Third to attack the Christians, and paid a generous homage to the worth of his deceased opponent[1].

But it must be remembered, that their more usual practice was to put to death all prisoners who refused to become renegades[2], and the religion which gave rise to

[1] Digby's *Tancredus*, p. 29.

[2] Ibid. pp. 16 and 17; Ward, Vol. II. p. 142.

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that state of things, which enabled it to be said that "moral feeling of responsibility, and even moral perception of right and wrong, appear to be well nigh extinct among them[1]," is not one which, while it remains, can admit of the coexistence in any great degree of the beneficial results of Christianity. Even those who went to redeem captives were not exempt from their cruelties[2]; and every account of shipwreck on Moslem coasts, in all their territories until very recently, and in several up to the present time, presents the same unvarying tale of slavery or death.

When nations have so far retrograded as to fall into the state of barbarism which prevailed among the followers of Mahomet, the first improvement as regards international law is to be sought in the rights of war. It may not be too much to say that most Moslem nations have now adopted those more enlightened views regarding these rights held in Christendom, although they are in a great measure strangers to the views which so beneficially regulate the pacific international relations of modern states. This has been owing chiefly to the circumstance that when foreigners first began to reside in Moslem countries they were specially and of necessity exempted by treaty from being under the jurisdiction of the native tribunals.

The improvement in the international rights of war among Mahometans derived from their intercourse with

[1] Jowett's *Christian Researches*, p. 251.

[2] Digby's *Mores Catholici*, Vol. XI. p. 114, &c

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Christian nations, has only been comparatively recent and gradual[1]; but it may be hoped that it will not be the less permanent. At the present time they have given up, in actual practice at least, the strict letter of the Koran, that infidel, i.e. non-Mahometan powers are to be made war upon on account of their religion; and in commencing war have so far improved as not to begin, as was their custom in former times, by imprisoning the ambassadors of the nations with whom they go to war, or by seizing as slaves all their subjects then within their territories. On the contrary, they not unfrequently allow these latter a reasonable time for departure. In carrying on war, Mahometans have also ceased as a general rule to reduce their prisoners to slavery, but otherwise carry it on with much of the ferocity which characterizes its rudest stages. These nations however are now considered to be under the same obligations as those of Christendom to observe the international law of the latter so far as it is applicable to them.

These latter remarks of course do not apply to the Moslem tribes of the Sahara, who appear to be not at all, or at most very slightly raised above the condition of barbarism into which nearly all African tribes have fallen.

[1] "It was not till the year 1828 that Turkey and Persia regularly agreed respecting exchanges, &c. of prisoners." Manning's *Law of Nations*, p. 162.

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CHAPTER II.

The Influence of Christianity upon the International Law of non-Christian Nations other than Mahometan.

THE Pagan tribes of Africa can only be said to possess the merest rudiments of an international law, the influence of Christianity upon which has been scarcely perceptible. European Christian nations would only interfere, as a general rule, under circumstances requiring them to protect their own subjects from actual ill-usage, or to punish any violent departure from the more ordinary rules of warfare. Its influence has thus been very slight and indirect through its previous influence upon the international law of those European nations that have entered into any commercial or other transactions with them.

The transactions of Christian states with the independent Pagan nations of the east of Asia have led to the opening of those countries to their subjects (in a greater or less degree), as well as to obtaining security for them while resident there. These nations have now come under the more ordinary rules of the international law of Christendom; and on account of their religion, with the happiest prospects for their future progress. "For centuries there has been less war in south-eastern Asia than in any other part of the world. The terrible struggles which have disgraced and devastated not only

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Africa, America, and western Asia, but even civilized and professedly Christian Europe, have no parallel in the furthest east[1]." Continued peace has not, nor is it to be expected that it had, been always preserved in these different and numerous Buddhist nations, but the sacredness with which Sakya Muni taught that every form of life was to be regarded has tended greatly to prevent the frequency of wars. The jealousy with which they have regarded Europeans must be attributed to and is justified by the improper and unscrupulous conduct of many of the representatives and subjects of the nations of Europe. But it is to be hoped that these now entertain more correct views as to the conduct they should pursue, and that the limited opening of the countries now referred to may by proper means lead to further and beneficial international communications.

It does not come within the limits of this Essay to treat of the probable results of the present civil war in China, whether as depending on its Christian character, or on the accession of that nation to the commonwealth of states connected together by the international law of Christendom. Still less as to the possible consequences of the driving out of such a large proportion of the population of that country as the Tartar element consists of, with reference to the consequences of former similar revolutions, and the rolling forward thereby caused of Tartar tribes on the countries of the West, further than

[1] *Calcutta Review*, No. 38. Buddhism.

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to remark, that every opportunity should be taken of calling attention to the danger it may give rise to of a Tartar invasion of other nations, as exemplified by the events which have always hitherto followed consequent upon troubles in central Asia or northern China, viz. the entrance of the Juts into India, the final fall of the whole race of northern barbarians on the declining empire of Rome, and the rise of the monarchies of Genghis Khan and Tamerlane[1].

The peculiar circumstances which caused Japan to adopt a strict policy of non-intercourse with almost all the rest of the world has of necessity hitherto prevented Christianity from exerting any lasting influence on the institutions or usages of that empire. It would be extraneous to the subject of this Essay to enter into any discussion respecting the events which led to the adoption of this system of policy, but it would appear that the time is not far distant when it will be partially relaxed. It is indeed to be hoped that governments, calling themselves Christian, will prevent any recurrence

[1] Estimating the number of the Tartar population of China at 50,000,000, at least 15,000,000 would survive to cross the frontier, and such an increase to the population of Tartary could not fail to produce serious consequences in central Asia. Any *conquest* of a civilized country by a Tartar invasion is now of course out of the question, yet a Tartar army would encounter no opposition worth mentioning either in Persia or Asiatic Turkey, and could do a great deal of mischief in an inroad into south-eastern Russia or northern India. (Sept. 1854.)

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of conduct similar to that which in that country, two centuries ago, reflected such discredit on the subjects of European Nations, as well as on Christian Missionaries and their converts.

Little need be said respecting the Tartar tribes. The influence of Christianity as connected with the famous Prester John will not be investigated here; for if such a person existed as an independent Tartar sovereign, the influence which his conversion may have produced was not permanent; nor does there appear to be any international transaction in the annals of Tartary which can be ascribed to the influence of Christianity as brought about by Nestorian or other Missionaries. When these tribes have left their native deserts, they have always exhibited the same barbarity of manners.

The independent islands of the Pacific Ocean which have made any progress in civilization, owe that progress entirely to their conversion to Christianity, and have adopted, so far as it is applicable to them, the international law of Christendom. The islands which yet remain pagan are becoming gradually converted, and the difference produced by the influence of Christianity with regard to the international usages observed by their inhabitants may be perceived by contrasting their present with their former conduct towards other people.

The influence of Christianity upon the international law of the aboriginal nations of America may be thus stated: The semi-civilized empires of the Mexicans,

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Muycas and Peruvians, had no means of deriving any advantages from this source while they remained independent. The corrupted form in which Christianity was introduced among them by the Spaniards, and the flagrant disregard evinced by that people of the precepts of the religion they nominally professed, could not but have had a prejudicial effect; and the general conduct of the Peruvians was more in accordance with the teaching of the Gospel than that of the conquerors. These remarks likewise apply to the inhabitants of most of the West India islands.

The Cherokees, Creeks, and Choctaws, who have, for the most part, embraced the religion of Christendom, have also with their conversion adopted, in a great measure, its civilization. But though the mode of warfare of the non-Christian Indian tribes of North America has been in some slight degree modified by their connexion with Christian nations, its improvement was considerably retarded by the circumstance of their being employed as allies and auxiliaries by European nations in their wars on that continent, and having thus had their barbarous customs encouraged. Lord Chatham's reprobation of the conduct of the English Government during the American war has been already referred to.

In regard to the South American nations, not hitherto mentioned, there is no circumstance which calls for observation here, because the chief event that has occurred in respect to them, the change produced in the manners of the tribes on the Paraguay, by the Jesuit

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missions[1], though a matter of considerable interest, is not one of any international importance.

In conclusion, it may be observed generally, that the progress of all these non-Christian nations was greatly impeded on account of their but too often coming in contact with the outcasts of Christendom, and by reason of the distrust the conduct of these strangers very naturally produced. Christian governments also showed a reckless disregard of the unhappy and deplorable events to which the unprincipled conduct of these their subjects too frequently led.

The influence of Christianity as regards the international law of these non-Christian states is to be deduced from its previous influence on that of the European nations which have had transactions with them, as well as on the general manners of the latter, who, though they have in their dealings with these nations too often neglected and disregarded the precepts of the religion they profess, yet by means of their civilization, which is constantly progressive, have to a certain extent indirectly introduced the influence of Christian principles.

Of the foregoing nations those that were formerly and those that are now much advanced in material civilization may be also described as being stationary, and not progressive. Their manners towards strangers and in war were mild, and they were acquainted with, and more or less observant of, those general maxims of international law

[1] Southey's *History of Brazil*, ch. 23, 24.

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which are found practised by every community not sunk into utter barbarism. But at the same time these maxims contained no principles from whence future improvement might be deduced. This want their intercourse with Christian powers has supplied; and though in many cases the conduct of Europeans has been productive of evil results, these have been of transient effect, and their worst consequence has been the retarding of this improvement. As regards the more barbarous nations, they have, in their dealings with European powers, been in some degree taught or constrained to abandon their ordinary cruel mode of warfare, and to treat strangers with kindness; and a basis has thus been afforded by which they may eventually have extended among them the advantages and benefits occasioned by the international law of Christendom.

Though it is true that, without the religion the civilization of Europe, in its entirety, cannot be received by heathen nations[1], yet our international law may be introduced among them in many and very essential points. By thus extending its benefits even to those who reject its truth, Christianity manifests both its evidence and excellence; and by its influence upon this important branch of jurisprudence, shows the valuable assistance which it has rendered and continues to render in promoting the happiness and progress of the human race.

[1] Heeren's *Political System of Europe*, Vol. II. p. 391.

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CONCLUSION.

We have seen how western Europe gradually emerged from the confusion caused by the barbarian conquest, mainly through the influence of Christianity; how its international law became settled in the seventeenth century after the publication of the work of Grotius; and how great has been the influence of Christianity, both on the sources from whence that international law has been derived, and on the circumstances which determined its precise form and character. We have seen that the other nations of the world have more or less adopted the rules of the international law of western Christendom, which has, therefore, in a greater degree than any previous system, become that of the world. The improvement thus wrought in international law is one, and certainly not the least, of those many blessings which Christianity has conferred upon mankind, and is, indeed, the necessary result of its principles. For, in the language of the first of English philosophers, there never was "any philosophy, religion, or other discipline which did so plainly and highly exalt the good which is *communicative*, and depress the good which is private and particular, as the Holy Faith[1]."

[1] Bacon's *Advancement of Learning*, Book II. Action and Contemplation.

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APPENDIX.

I.

On the phrase "International Jus."

THE phrase by which the subject-matter of this Essay can be designated, whether the law of nations or the more appropriate modern one of international law, must have appeared in several instances as not expressing what was intended. This is the case with all treatises on this subject, and arises from the word "law," often conveying a different meaning from that which is sought to be expressed. Law has the signification of a rule of action fixed and determinate; whereas international law is in a great measure made up of unsettled and disputed points and arbitrary usages, differing widely in different parts of the earth. And though it is the tendency of increasing civilization to render it more and more determinate, yet the world consists of "sets of nations," many of which are not far advanced in material civilization, to whose ill-defined international law the word can scarcely be applied.

Jus Feciale, while it could hardly have expressed all that would be meant by such a phrase in imperial Rome,

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would be far from doing so now, while the law of nature and of nations is ambiguous, being vague, as well as not expressing the subject.

Dr Zouch appears first to have suggested the more proper designation, the title of his work being "Juris et Judicii fecialis sive Juris inter Gentes;" and this was probably borrowed by a person of the legal learning of the chancellor D'Aguesseau, and afterwards adopted from him by Bentham[1]. But the phrase is nevertheless open to objection, the signification of the term "international law" not being coextensive with the branch of jurisprudence of which it is the title, nor does it state the exact meaning intended. It may indeed be admitted that this phrase is preferable to the term "law of nations," and well adapted for the present for popular use; but for purposes of philosophical accuracy the author would much prefer another phrase, which an eminent living writer has suggested, namely, "international jus[2]."

II.

On the Middle Ages.

To prevent misapprehension the following observations are offered respecting the light in which the middle ages have been regarded. The disorders and

[1] Wheaton's *History of the Law of Nations*, p. 101.

[2] Whewell's *Elements of Morality*, Book VI. ch. I. 1049.

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confusions of those times have been considered as the continuation of those of preceding ages: the vast efforts for amelioration which then took place, as the peculiar characteristic of the time. Cruel and grievous oppressions prevailed, but not such as are to be found in the history of the barbarian conquest, as well as an enthusiasm for all that is good, and a deep-seated religious feeling, though often misplaced, to which the world had before been a stranger, and which has never been since revived on so grand a scale. What may now be the case with individuals was then the general rule of action: openly avowed by all and practised by the great majority. All the institutions of the 13th and 14th centuries tended to this direction. The causes which led to their failure to produce permanent commensurate results have been touched upon so far as the subject of this Essay required; and it is unnecessary to enter into further details here. But though the middle ages were thus distinguished, and they in this manner so completely supplied what was then wanted, there can be nothing more fallacious than to attempt to revive mediæval customs, institutions, or usages. These were so connected together that they cannot be separately revived or restored; and the vast changes that have taken place in society during the last three centuries would, even if such were possible, render them wholly unsuited to the present time. Excellent as the great institutions of the middle ages were, they were incapable of preserving

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their original form, and in many cases degenerated into systems of polity which were decidedly mischievous. The spirit which gave rise to them is all that we could wish to see revived in the present day.

III.

Turkish Firmans in regard to the Circassian Slave-trade.

With reference to the remarks and observations contained in the first part of this Essay (Chapters VIII. and IX. sec. 1) respecting the encouragement of slavery by the Koran, and especially the Circassian slave-trade, the author avails himself of this opportunity to subjoin copies of the French version of two Turkish firmans relative to this traffic, which have been lately published.

Firman.

(Traduction.)

Firman adressé à Moustafa Pacha, Commandant de l'Armée Impériale de Batoum, chargé aussi de la défense des côtes de Sohoum, et décoré de l'Ordre Impérial de Medjidiyé de la première classe.

A toi mon Vizir,

L'on vient d'apprendre et de constater qu'il y a des gens qui prennent de la Georgie des enfants et des femmes, et les vendent en disant que ce sont des esclaves.

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Je n'ai pas besoin de dire que ce procédé est très blâmable et abominable. Indépendamment de cela, c'est aussi une chose contre le point d'honneur et contre l'humanité, et c'est pourquoi j'ai donné des ordres que désormais ce procédé soit rigoureusement prohibé dans ces pays là, et que tout individu qui aura eu l'audace de faire une chose pareille soit sur le champ sévèrement puni. En conséquence, le présent commandement Impérial est émané de mon Divan Impérial et expédié pour publier mes ordres souverains.

Informé que tu seras de ce dont il s'agit tu porteras à la connaissance de tous ceux qu'il faudra dans ce pays là mes ordres souverains, et dorénavant, comme il a été dit plus haut, si un cas pareil se produit le vendeur ainsi que l'acheteur soit immédiatement puni de la manière la plus rigoureuse. Tu prendras donc les mesures les plus énergiques afin que chacun sachant avec quelle rigueur l'achat et la vente d'esclaves sont prohibés, personne n'aye l'audace de faire cette chose abominable; tu feras, donc, tout ton possible en faisant les récherches nécessaires de découvrir les femmes et les enfants qui se trouvent au pouvoir de tel ou de tel autre individu, et de les faire consigner à leurs familles.

Des lettres Vizirielles ont été expédiées au Pacha de Trebizonde et aux Gouvernements des Districts de Djanih et de Lazistan contenant des instructions à l'effet que les femmes et les enfants ainsi enlevés ne puissent pas passer par terre dans l'intérieur de l'Anatolie ou

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débarquer dans aucune partie, et vous serez constamment en communication avec ces fonctionnaires sur cette matière importante.

Tu ajouteras foi au noble chiffre dont est décoré le présent commandement Impérial, donné dans la première dizaine du mois de Moharrem, l'an 1271 (le 1 Octobre, 1854).

Firman.

(Traduction.)

Firman adressé à Moustafa Pacha, Commandant de l'Armée Impériale de Batoum, chargé aussi de la défense des côtes de Sohoum, et décoré de l'Ordre Impérial de Medjidiyé de la première classe.

A toi mon Vizir,

L'homme est la plus noble de toutes les créatures sorties des mains de Dieu, qui l'a destiné à être heureux, en lui accordant la grâce de naître naturellement libre. Mais, contrairement à sa destination primitive et fortunée, les Circassiens se sont fait une étrange habitude de vendre les enfants et leurs parents en qualité d'esclaves, et même, ce qui se pratique parmi quelques Circassiens, de voler les uns les enfants des autres, et de les vendre comme des animaux et des merchandises.

Or ces procédés, vraiment incompatibles avec la dignité de l'homme et contraires à la volonté du Souverain Créateur, sont extrêmement mauvais et blâmables, et je les condamne aussi complètement. C'est pour-

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quoi je viens d'ordonner, qu'à l'effet d'empêcher cet état de choses, on donne des conseils efficaces et les ordres nécessaires et analogues aux Circassiens; qu'en même temps on prenne des mesures pour empêcher l'embarquement d'esclaves dans les échelles qu'il faut pour cela; et qu'on fasse savoir ce dont il s'agit à toutes les autorités militaires et civiles de ces environs là.

En conséquence, le présent illustre firman est émané exprès de mon Divan Impérial pour publier mes ordres souverains à cet égard.

Toi, donc, Mouchir susmentionné, informé que tu seras de ce que j'ordonne, tu procéderas avec ce zèle qui te caracterise, et cette grande intelligence qui te distingue, à porter ma volonté souveraine à la connaissance des Circassiens, et de tous ceux qu'il faudra, en la publiant de la manière la plus détaillée; tu feras tout ce que ton savoir-faire et ta sagacité te suggéreront pour mettre fin, en donnant et faisant exécuter les ordres nécessaires, à l'usage illégal et abominable de vendre les enfants et leurs parents; tu prendras les mesures nécessaires pour empêcher le passage d'esclaves et leur embarquement dans les échelles qu'il faut pour cela; et en outre, comme il est nécessaire de punir ceux qui, en contravention à ces ordres, sont coupables de la vente de leurs parents, ou du vol des parents et des enfants d'autrui, ou qui désirent les exporter au dehors après les avoir achétes, vous ne négligerez en aucune manière ce point; enfin, tu mettras tous tes soins à faire tout ce que

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